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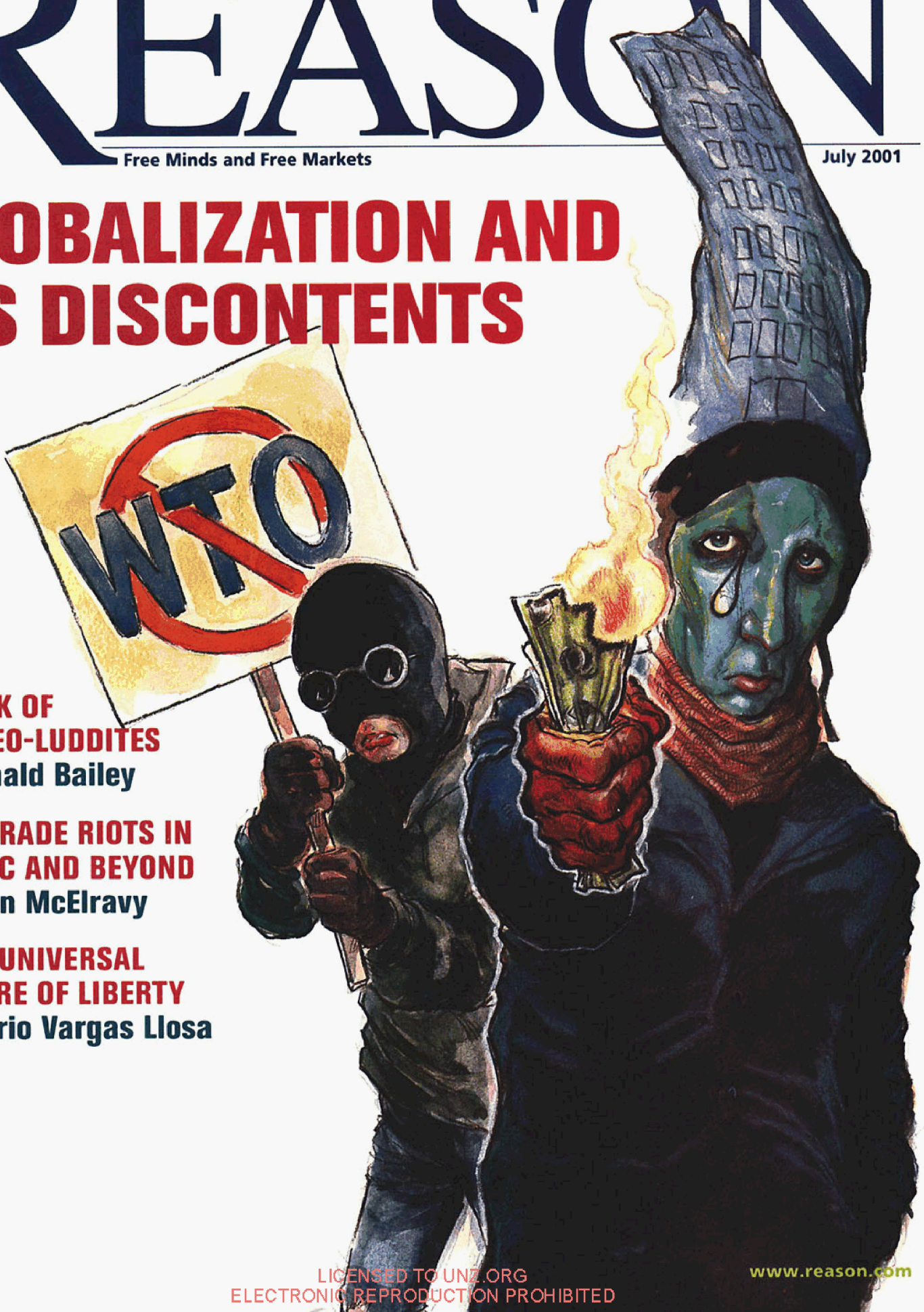
July 2001

GLOBALIZATION AND ITS DISCONTENTS



ATTACK OF THE NEO-LUDDITES
By Ronald Bailey

ANTI-TRADE RIOTS IN QUEBEC AND BEYOND
By Evan McElravy

FOR A UNIVERSAL CULTURE OF LIBERTY
By Mario Vargas Llosa

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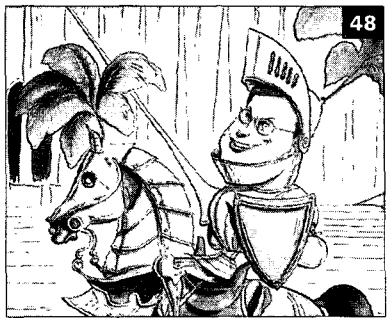

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Editor's Note

Not long after the World Trade Organization protests in Seattle in 1999, I got into an argument with a friend about "globalization," that vast, imprecise abstraction that has become one of the great buzzwords of our age. My friend had recently traveled to sub-Saharan Africa and had been appalled by the way people there seemed to crave not just Western clothes, cigarettes, and the like, but the latest in high-tech gadgetry.

"We're exporting more than things," he told me, shaking his head in despair. "We're exporting expectations." Why, I asked, was it such a bad thing that Africans wanted many of the things he took for granted? "Because they have a right to live their own lifestyles, free from our interference," came the reply. Then what, I asked, was he doing touring the region? Soon enough, we were at each other's throats.

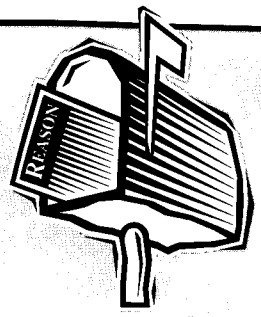
I thought of that conversation often while putting together this issue, which we've aptly titled "Globalization and Its Discontents." Evan McElravy's account of the demonstrations against this spring's Free Trade Area of the Americas meeting in Quebec (see "Enemies of Trade," page 36) concludes that it is up to those of us who believe that "true free trade will bring great benefits to us all" to make the positive case for globalization. Mario Vargas Llosa does exactly that in "Global Village or Global Pillage?" (see page 40), arguing that "a universal culture of liberty" is a necessary precondition for widespread wealth and democracy.

In "Rage Against the Machines" (see page 26), Science Correspondent Ronald Bailey chronicles the International Forum on Globalization's February "Teach-In on Technology and Globalization." The IFG is down on both because, as its president Jerry Mander puts it, "We are in the terrifying situation in which a few billionaires colonize the minds of millions of people, teach people to hate where they live, worship McDonald's, and trust corporations."

Leave aside Mander's absurd claims about billionaires, sacrosanct McDonald's, and universal faith in corporations. He has put his finger—or thumb, at any rate—on a defining aspect of the increasing economic, political, and cultural trade among the peoples of the world. While that interaction doesn't necessarily cause individuals to "hate where they live," it often sows discontent with the status quo by providing alternative visions of a better life for themselves and their families.

Such discontent is blessedly destabilizing, precisely because it motivates people—in the First World as well as the Third—to create a place in which their dreams and hopes might be realized. Together, the cover articles make the case that for most people, the truly "terrifying situation" would be a world with less globalization, not more.

—Nick Gillespie



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Contributors

If you're fond of the relatively free flow of information on the Internet, then you owe a huge debt to REASON regular **Mike Godwin**, who reviews Jessica Litman's provocative new book *Digital Copyright* in this issue. (See "Copywrong," page 56.) Godwin was the first staff counsel for the Electronic Frontier Foundation; he also served as co-counsel to the good guys in *Reno v. ACLU*, the 1997 U.S. Supreme Court case that struck down federal attempts to regulate "indecent" content on the Net. These days, Godwin, the author of 1998's *Cyber Rights: Defending Free Speech in the Digital Age*, fights the good fight as a policy fellow at the D.C.-based Center for Democracy and Technology. "The content battles are still out there," he says, "but what I really worry about is how copyright and other intellectual property issues will play out in the digital age."

Since joining REASON' s staff in 1997 as Washington editor, **Michael W. Lynch** has never hesitated to call 'em like he sees 'em. With this issue, he becomes our national correspondent and leaves D.C. for Connecticut. Lynch's appreciation for plain-speaking served him well while covering the nation's capital, where Orwellian word games are the norm. For this issue, he interviews Federal Election Commission member Bradley A. Smith. (See "Prof. Smith Goes to Washington," page 48.) Smith doesn't beat around the bush either—especially when it comes to one of D.C.'s perennial topics, incumbency protection, better known by the euphemism "campaign finance reform." Lynch also reports on a bizarre legal case in which the National Labor Relations Board is arguing that union organizing requires the use of language in the workplace that would, well, make a longshoreman blush. (See "Bleeping on the Job," page 18.)

We're saddened to report that legendary Contributing Editor **Edith Efron** died on April 20, at the age of 79. Efron had a long and varied career in journalism, writing for publications ranging from *The New York Times Magazine* to *TV Guide*; she was also the author of several important books, including 1971's *The News Twisters*, a compelling study of media bias in the 1968 presidential election, and 1984's *The Apocalyptics*, an exposé of shoddy science and its effects on environmental policy. Among her most memorable pieces for REASON were a 1992 essay on Clarence Thomas, "Native Son: Why a Black Supreme Court Justice Has No Rights a White Man Need Respect" (a finalist for a National Magazine Award) and her 1994 piece on Bill Clinton, "Can the President Think?," a remarkably prescient study of the former president's character flaws. Both pieces, along with Editor-at-Large Virginia Postrel's remembrance of Edith, can be accessed at reason.com/hod/efron.html.

Title IX Critics

Thank you to Michael Lynch for an outstanding article ("Title IX's Pyrrhic Victory," April). It conveys better than anything I've read the draconian combination of activism and bureaucracy in pursuit of "equality." I am a former college swimmer, and I have been pained to read in the last few weeks that two more universities, Kansas and Nebraska, are dropping their men's programs. I blame the athletic departments, too, which are eager to use their major sports as cash cows and glorified minor league teams. But Title IX deserves the lion's share of blame.

The irony is that I am a high school government teacher and the head girls swimming-and-diving coach at my school. I have a team of phenomenal young women who excel in the pool and the classroom. However, their opportunity to pursue a sport should not come at the expense of young men who don't fit into a numerical quota. Rather than addressing this issue, supporters of Title IX deflect criticism, instead focusing on the "Title IX babies" that have won Olympic medals.

Robert Black
Canandaigua, NY

If Title IX were applied to other areas as it is to athletics, the following groups could be in trouble:

Engineering schools: At the University of Arizona in the mid-1980s, the ratio of male to female engineering students was about 10 to 1. I don't think it has changed all that radically in 15 years. Other schools show a similar ratio.

Women's studies programs: Enough said.

Nurses at federally funded hospitals: Almost exclusively female.

The U.S. military: If *opportunity* means *participation* in Newspeak, then our Armed Forces might as well go home now.

DEA agents, federal judges: Mostly male. Let's shut down the war on drugs (not a bad idea) on the basis of Title IX inequities in the drug warrior ranks.

This list could go on indefinitely. I used to think that no one would ever take this or any other issue that far, but all it seems to take is a crackpot judge and a boatload of lawyers with some skewed statistics to send any federally funded organization into chaos.

Andrew Varnava
Ventura, CA

Nicely written article on the Orwellian policy known as Title IX. However, I think the only thing more irrelevant than forced female athletic programs are the high-profile male athletic programs.

Far too much emphasis is placed on sports in this country. Athletes are inappropriately placed on "hero" pedestals by the masses. While at the gym during lunch time on a weekday, I noticed a college basketball game on one of the televisions. The game was in Texas, where it was about 1:30 p.m. Why weren't these players in class?

Male collegiate athletic programs are nothing more than a money mill, and I would love to see them relegated to the extracurricular bin where they belong—though I would never support a law to affect this change.

Tim Grimes
Moorpark, CA

Hooked

As a health care provider, I had a mixed response to Ronald Bailey's "Goddamn the Pusher Man" (April). His free market arguments as they pertain to the rights of the pharmaceutical industry are unassailable. But Mr. Bailey's assertions regarding the scientific laudability of the "better health through chemistry" credo of the drug industry deserve closer examination.

There is nothing wrong with quelling one's symptoms when one is in pain or discomfort. There is something very wrong with passing that off as having fixed the problem. Or in having that be considered the state of the art. That's the case for many drugs, like acid-blocking Pepsid AC; they do nothing to change what is actually wrong with the person. Ditto for Mr. Bailey's antihistamine drug. Ditto for asthma medications.

Drugs, contrary to Mr. Bailey's fervent belief, do not save us money. Drug errors kill 98,000 Americans every year, according to the Institute of Medicine. *The New England Journal of Medicine*, a rather conservative periodical not aimed at the sprout-munching, crystal-gazing, guru-worshipping, sandal-wearing crowd, reported that nearly 110,000 Americans die each year in hospitals from *properly* prescribed medication. We spend $75 billion each year on prescription medication and another $76 billion on hospitalization cleaning up the problems caused by those medications.

Taking the aforementioned body count to its logical mathematical conclusion, we find that legal drugs are the third leading cause of death in the U.S., behind only heart disease and cancer. Yet despite all this and Mr. Bailey's admiration of the pharmaceutical industry's ability to do research independently, the National Institutes of Health gave $3.5 billion for research to 25 medical schools.

All the while, non-drug therapies that work incredibly well, like chiropractic, chelation therapy, and nutritional therapy, are given short shrift by the government and private insurers. In fact, chiropractic receives a grand total of zero federal dol-

lars for research. This is remarkable considering the reams of patient testimony gathered over a century of clinical practice testifying to the fact that chiropractic has proven benefits for patients suffering from asthma, headaches, PMS, poor immune function, ear infections, and spinal pain, to name a few.

The drug industry, with its ally the American Medical Association, has rigged the deck so that drugs, some potentially deadly or not very effective, are happily paid for by insurance companies. This has nothing to do with research. It has to do with politics and who will continue to receive the bulk of state, federal, and private money. Remember, the AMA et al. were found guilty of conspiring to eliminate the chiropractic profession. Given the incestuous relationship of the AMA and the drug industry, one does not need to be Oliver Stone to connect the dots.

I have little space in my capitalistic heart to spend pining for the poor, vilified drug companies. I have plenty of space to worry about the accumulative physiological and psychological damage we are accruing in an increasingly drugged culture and the plight of working families who only have orthodox care like drugs paid for in their insurance plans.

Charles A. Krieger
Doctor of Chiropractic
Astoria, NY

Ronald Bailey strives to make a case for what is, in reality, a double tax billing. The cited example of Xalatan is a double taking from taxpayers. First they funded the drug's development. Then once the drug was sold, taxes were taken from them again when the drug company "paid" corporate income tax, since corporations ultimately pass these taxes through to the consumer. So the federal government—and Pharmacia and Upjohn—used the U.S. tax system to exact hundreds of millions from American taxpayers. Sure, even bearing the full cost of production, these companies' customers and the United States may eventually see a net benefit, because of the value of some drugs in bettering lives, but let nobody be deceived: Both the NIH grant and the "income taxes" are takings.

The fact that smoking marijuana treats glaucoma much more cheaply, moreover without incurring a tax, is ignored by the article. There are almost certainly other cheap herbal preparations that could effectively treat or ameliorate various chronic conditions. The government and drug companies suppress such knowledge; it is criminal conduct of the vilest sort.

In short, the entire article is an apology for interlaced gangs of criminals—for mafias. Was that Bailey's intent—to covertly make a case for removing all subsidies and taxes?

Michael G. Jones
Palm Harbor, FL

Ronald Bailey's article makes some interesting attempts to defuse critics of the pharmaceutical industry, but I'm not fully convinced. Particularly troublesome to me as a sometime small-business proprietor is the assertion that the 20 percent profit calculation based on writing off research and development as "current expenses" would shrink to 9 percent if those expenses were depreciated. This seems to me to fly directly in the face of the way the rest of us calculate our taxes.

Suppose my gross profit for the year X is $10,000. If I spend $8,000 that year to earn the $10,000, and can write that entire amount off as current expenses, then my net profit is $2,000. But if I depreciate $2,000 of my expenses over five years, then I can only write off a fifth of that $2,000 in year X, i.e., $400 of it. My books will then show a net profit of $3,600. It does not seem to be the case that I or anyone else would show a higher profit after subtracting an expense in its entirety.

This isn't the only instance of baffling logic in the piece. Drug firms argue that higher profits than in most enterprises (9 percent to their 5 percent) is justified given the start-up costs, and that important among these is the pursuit of possible products down what often prove to be blind alleys. But it is precisely at this stage in the game, Bailey points out, that federal subsidies most come into play. By funding the research, the government steps in to shoulder the risk. You might argue that government shouldn't be in the business of doing this, but so long as public money serves this function, it is difficult to see how the drug companies can make a case for higher profits to offset higher risk.

Mr. Bailey approvingly quotes Frank Lichtenberg's assertion that his study of newer versus older drugs showed that newer on the whole meant better, lowering "mortality, morbidity, and total medical expenditure." But it is not at all clear how Prof. Lichtenberg gets from those conclusions to his remarkably counterintuitive one with which Mr. Bailey follows it: that using generic drugs instead of brand-name ones "would increase total treatment costs" and lead to "worse outcomes." Any generic drug my physician may authorize is by definition identical to the brand-name drug for which it is a substitute.

The first line of defense against junk science is peer review by scientifically informed people. When dealing with cutting-edge technology issues where there are many opportunities for confusion even without anyone deliberately creating it, may we trust Mr. Bailey to see clearly and report well? Alas, the epistemological heffalump-traps in his drug article do not assure me that this will be so.

Nick Humez
Montclair State University
Upper Montclair, NJ

After enjoying REASON for over 20 years, I am finally moved to write. I liked "Goddamn the Pusher Man": More consumers and voters need to understand how drugs reduce overall medical costs.

I do have a couple of concerns. First, Bailey claims that if pharmaceutical companies depreciated their research and development expenditures, their reported annual profits would decline. Over the longer term, I do not see how this would make any difference, other than to smooth out the impact of changes in R&D funding.

My second concern regards his arguments supporting the 20 percent profit level (or 9 percent, if he's right about the above). Drug discovery and development may well be very risky. But if the large drug companies are consistently making a 20 percent annual profit, it would seem they have figured out how to take the risk out if it. In a free market, this should lead to increased competition, unless there is some barrier to entry. Maybe it's size; one needs to be able to fund many projects and have a large, specialized R&D division to

find a winner that pays for all the effort. Bailey quotes a figure of $300 million to $500 million to bring a single drug to market. Does that include a share of the R&D spent on products that never made it? Would a new company need to spend many times that to produce one marketable product?

Bailey quotes George Whitesides as saying, "Start-ups take 50 percent of the risk out of a product by taking it up to clinical trials." For every start-up that gets this far, there must be many that fail. Too bad Mr. Bailey does not focus on this aspect. It would be interesting to calculate the overall industry profit level after including all of the costs of the start-ups.

Jim McIntosh
Toronto, Ontario

Ronald Bailey makes a common error. Nowhere in the Hippocratic Oath does the injunction "First, do no harm" appear, nor is there any language that translates simply into that advice. It is certainly an admirable approach, and doctors (to say nothing of legislators) should heed it, but it's not in the oath.

Dan Karlan
Waldwick, NJ

Ronald Bailey replies: Some drugs do cure disease. Stomach acid-blockers combined with antibiotics can eliminate ulcers. Many future medicines will be targeted toward correcting underlying physical maladies. The Institute of Medicine study, *To Err Is Human: Building a Safer Health System,* estimated that as many as 98,000 people die annually from medical errors that occur in hospitals. While tragic, these errors are hardly the fault of drug companies. As for the alleged numbers from *The New England Journal of Medicine,* an editor from the journal assured me that they have published no such study. Dr. Krieger may be misquoting a line found on many alternative medicine Web sites, attributed to *NEJM*: "During 1983 to 1992, between 90,000 and 110,000 Americans died from reactions to prescription drugs." Note that it's 110,000 per decade, not per year. Finally, I agree with Dr. Krieger at least in that patients should be able to choose whatever therapies they want.

With regard to Xalatan, economist Frank Lichtenberg was only addressing the impact of R&D subsidies on the government's budget. In terms of the government's bottom line, taxpayers who do not use Xalatan were not ripped off by the R&D subsidy, and those who do use the drug presumably benefited enough to make any taxes included in the drug's cost worthwhile. Mr. Jones raises a reasonable question as to whether such subsidies are justified. Certainly, corporate income taxes should be abolished. As for medical marijuana, I'm all for it—and tax-free too.

The confusion over the calculation of drug company profits arises from my colloquial use of the term *profit margin.* Expensing R&D would indeed lower profits and profit margins, but this is not necessarily true for profit *rates*—returns on investment—which are generally considered to be the best figures to compare profits across industries.

According to economist Henry Grabowski, expensing R&D significantly understates a firm's asset base and therefore misleadingly inflates the returns. This is because a typical drug candidate takes more than 10 years and several hundred million dollars to reach the market, thus much of the company's capital is R&D in the pipeline rather than physical capital in plants and equipment. As Grabowski's studies and many others have shown, drug companies' returns on capital after this adjustment are still above the average for American industry. However, most of the studies conclude that risk-adjusted returns in pharmaceuticals are only modestly above competitive levels. As Grabowski concludes, "This seems like a small price to pay for the highly innovative performance of the industry."

Government R&D subsidies do reduce risk, to some extent. But one should not look solely at the risks borne by big pharmaceutical companies. Venture capitalists and others who invest in scores of start-ups shoulder a huge amount of the risk involved in getting drugs to clinical trials and beyond. As Mr. McIntosh points out, many of these companies fail.

Prof. Humez asks why branded drugs might be better than generics. The confusion arises over my use of the term *generic.* When branded drugs' patents expire, identical generic versions can be produced. However, the relevant comparison is not between generic and branded, but between older drugs (both generic and branded) and newer (branded) drugs. Lichtenberg's point is that newer drugs make for better, more cost-effective health outcomes.

As for the Hippocratic Oath, Mr. Karlan is correct. "First do no harm" comes from the Latin phrase "primum non nocere," which is a translation of a phrase from Hippocrates' *Epidemics,* not his oath. The oath does more or less incorporate the idea, if a bit more verbosely.

REASON News

We're happy to announce that Sam MacDonald has joined REASON as our Washington editor, replacing Michael W. Lynch, who has been named the magazine's national correspondent. MacDonald, most recently a reporter at the *Laurel Leader* in Maryland, will write a weekly D.C.-based column for REASON ONLINE and will contribute a monthly column and other material to the print edition of REASON.

As national correspondent, Lynch will continue to write a weekly column on politics for REASON ONLINE. He will also pen a monthly column and regular features for the magazine.

Christopher Hull has also recently joined the staff, as a part-time associate editor. Hull, whose duties include preparing manuscripts for publication, has worked for *The Nation, United Media, Green,* and the *Fort Worth Star-Telegram.*

Memorial Memorandum

Michael Valdez Moses' piece on the Roosevelt memorial ("A Rendezvous with Density," April) was great! I had just finished reading John T. Flynn's *The Roosevelt Myth,* a wonderful debunking work on FDR. I was struck with all of the Roosevelt-Clinton parallels, particularly the mendacity, manipulation, and venality. Until I read your piece, I didn't realize the level of Clinton's interest and involvement in the FDR memorial. It all makes sense.

Stephen P. Foster
Mount Pleasant, MI

I'd like to thank Michael Moses for his delightful critique of the FDR Memorial. It's indeed only appropriate that the president who sired Big Government would have his wishes for a simple memorial ig-

nored in favor of another public works program.

David Hall
Durham, NC

Excellent article on the FDR Memorial—I am planning to cite it as a reading reference for my landscape architecture course this fall here at Iowa State. Moses' perspective will be a fine contrast to the gauzy and often uncritical accolades given this work in much of our profession's press.

But I must underscore that Lawrence Halprin—who may be politically naive but was a strikingly innovative designer (see his Ira Keller Fountain in Portland, Oregon)—is not an architect. He is a landscape architect. The two professions are related, but have diverged considerably since Frederick Law Olmsted's era. I make this distinction because, as you might imagine, my profession is often overshadowed by architecture; also, if someone I meet has heard of "landscape architecture," they almost always associate it with garden design or planting plans.

Michael Martin
Ames, IA

Michael Moses has a keen eye for the implicit ideology in public monuments, but I have to point out an inaccuracy. Moses criticizes Halprin for never having had an economic history course as he lamely explains the causes of the Great Depression. Then Moses notes that "the nation sank more deeply into the quagmire of the Great Depression in the years following the initiation of the New Deal in 1933." This is wrong.

First, look at unemployment. It rose from about 4 percent in 1929 to a peak of 25 percent in 1933. After 1933 it started to fall and fell until 1936, when it rose for about a year. After 1938, it continued to fall into the early 1940s. Next look at real gross national product. It fell from 1929 to 1933 and bottomed out in early 1933. Then it started to rise and climbed every year until the '36–'37 recession, after which it again continued upward into the early 1940s. (For more, see *A New Economic View of American History*, by Jeremy Atack and Peter Passell.)

Thus, the Great Depression bottomed out in early 1933 and began a slow recovery afterwards. This is not to say the New Deal turned the economy around; the recovery started before it took effect. In fact, some argue that the legislative flurry of the New Deal slowed down a cyclical recovery that was already in effect.

Dan Hardy
Austin, TX

Michael Valdez Moses replies: I welcome Mr. Hardy's suggestion that "the New Deal slowed down a cyclical recovery." As Lawrence W. Reed argues in his essay *Great Myths of the Great Depression*, "The 'economic stimulus' of Franklin Roosevelt's New Deal...achieved a real 'first': a depression within a depression!"

In support of my claim that the nation sank more deeply into depression following the New Deal's initiation, I would cite historian Paul Johnson. He states in his book *Modern Times* that "1937 was the only reasonably good year, when unemployment, at 14.3 per cent, actually dipped below 8 million; but by the end of the year the economy was in free fall again—*the fastest fall so far recorded*—and unemployment was at 19 per cent the following year." Johnson also notes that, besides a blip in '37, it was not until 1941 that "the dollar value of production finally passed 1929 levels."

In absolute terms, the Great Depression may have "bottomed out" by the end of 1933, but the unprecedented rate of economic contraction in 1937 and the prolonged duration of the depression, which lasted until World War II, argues against the notion that the New Deal was anything but a spectacular failure.

Unbalanced?

Imagine my shock when Jeff A. Taylor ("Balance Sheet," April) gave a down arrow to President Bush for wanting to reduce government spending. I am in complete shock. I empathize with Taylor, who is upset with the proposed $20 million cutback on funding for research on Parkinson's and Alzheimer's. Just imagine what could be accomplished if the government spent $40 million, or how about $1 trillion, on research! No doubt Alzheimer's would be eradicated, as well as all of society's ills. Notice my sarcasm. Mr. Taylor is obviously so perplexed by President Bush's commitment to reducing the incidence of abortion that he is willing to forgo his libertarian principles. If abortion weren't at issue, I imagine Taylor's criticism would quickly change to praise.

Josh Scandlen
Dayton, VA

Jeff A. Taylor replies: I assess plus and minuses in reference to the real world. In Taylorland, we'd have zero federal funding of such research, along with about eight fewer Cabinet agencies. But as that isn't the world we live in, the question is: Given that money will be spent on dubious things, is it possible for cash to go to the less dubious?

I consider stem cell research less dubious for several reasons. First, $20 million is absolutely nothing in the realm of federal spending. It is just a fraction of the many billions in new spending that the Bush team plans. Second, all available evidence suggests stem cell research is worthwhile—several rungs above, say, road improvements to every cow track that passes in front of a car dealership owned by the relative of a congressman. Third, there is the sad fact that federal research money really does seem to give many labs and scientists a stamp of validity.

Mr. Scandlen is correct that abortion plays in my negative assessment of the proposed policy change. But not for the reason he suspects. The abortion angle tells us that the policy is being driven by political factors quite apart from the merits of the research. That is never a good way to run a country.

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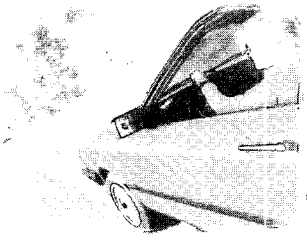

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Citings

Jesus, Gandhi, and Other Terrorists

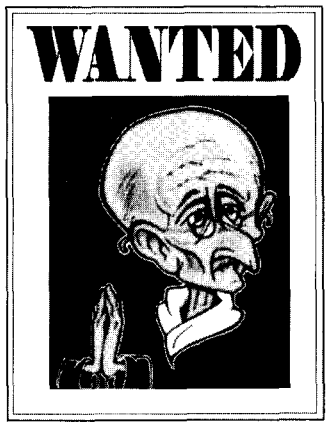
By Sara Rimensnyder

In Utah, farmers and ranchers have been calling for enhanced legal protection against animal rights activists, some of whom have taken to vandalizing private property and harassing farmers' families and clients. The state legislature responded this spring with a law restricting "commercial terrorism." The new statute is not only unnecessary—vandalism and harassment are, after all, already illegal—but also threatens even the most peaceful protests.

The law, sponsored by Rep. Gerry Adair (R-Roy), has two parts. First, it enhances the penalty for harassment or vandalism of an "animal enterprise," thus adding yet another group to the long list of protected classes in the American legal system. The second proviso is bizarrely vague, and extends to all businesses, not just fur shops, farms, and the like. It restricts protesters from emitting any "light rays or sounds waves" that enter a business.

"Individuals like Gandhi, Martin Luther King, and even Jesus would be considered terrorists under this bill," notes David Berg, the political coordinator for the Utah Animal Rights Coalition. That group, together with the American Civil Liberties Union, is suing the state on the grounds that the law fetters free speech.

The new rule has already had an unwelcome impact. On April 18, Berg and other UARC members were picketing and passing out leaflets near the entrance of the Delta Center, where the Utah Jazz play basketball. They were approached by a police officer carrying a copy of HB-322, who warned them that the bill limited such protest. The officer left them alone when they reminded him that the law wouldn't go into effect until May 1.



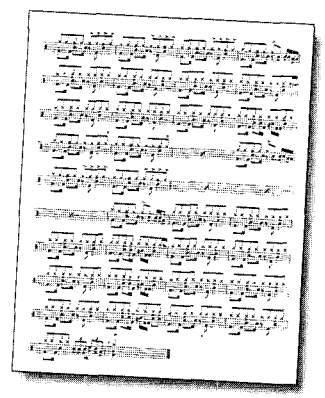
Spinning Gold

By Jeff A. Taylor

The twist would be delicious if it weren't so very predictable: Record companies are trying to define the copyrights for digital media in such a way that they won't have to pay for them.

Yes. The same folks who scream bloody murder at the very thought that someone, somewhere might download a song for free do not, in turn, want to pay royalties to music publishers.

Music publishing rights are very different from the recording rights that record companies own. They are, in fact, about the only sure way songwriters have of getting paid. But the Recording Industry Association of America has told the U.S. Copyright Office that it's just too much trouble to track down all the publishers whose music might be used in a recording company's streaming audio broadcast.



This effort builds on the record industry's successful rewrite of copyright laws to shift the payments of royalties from publishers (as is the case for analog radio) to the record companies (as is the case for digital radio). Even Web simulcasts of over-the-air radio have to pay the record companies. Needless to say, Net broadcasters aren't pleased with this. "I think the RIAA is a bunch of greedy, shortsighted idiots," Bill Goldsmith, Web director of simulcast pioneer KPIG, told *Wired News*.

This mess was caused by bad law enacted by a Congress fully

Balance Sheet

By Jeff A. Taylor

ASSETS

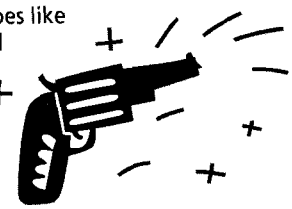
△ **▲ Ripping Yarn.** The World Trade Organization misplaces its orders to crush the world's poor long enough to rule for Pakistan in a cotton yarn dispute with the U.S. The Clinton administration had imposed a quota on yarn imports in 1998. The ruling leaves the U.S. 0-for-3 in recent WTO decisions.

△ **▲ Private Eyes.** Something good may yet come out of the indefensible shooting down of a plane over Peru that carried an American missionary and her daughter: More members of Congress are asking questions about that facet of the Drug War. The Andean Region Contractor Accountability Act would stop Washington's charade of hiding behind private contractors hired to do what the U.S. military or law enforcement aren't allowed to do in the region.

△ **▲ Secret Sharers.** A U.S. District Court judge in Seattle quashes a subpoena that sought the identities of 23 people who had posted on the Silicon Investor online financial bulletin board. TheMart.com said that the posters had somehow engaged in manipulation of the company's stock price. A separate shareholder's lawsuit against the company might have something to do with that claim.

△ **▲ Shot Through.** New York's Court of Appeals rules that gun manufacturers cannot be held liable for shooting deaths, a blow to the $4 million federal court judgment to the contrary. Judge Richard Wesley said lawyers for gunshot victims failed to show specifically how "marketing" put guns in the wrong hands.

△ **▲ Mixed Gun Nuts.** Sporting mottoes like "Armed Gays Don't Get Bashed" and "Pick on Someone Your Own Caliber," some 13 chapters of the Pink Pistols sprout up. Gun-loving straights also join up, enthused by the thought of plinking with a more diverse crowd. But gun-hating pols are unmoved. "Just another branch of the NRA," one sniffs.



▼ Grand Spaminator. Spain hates e-mail spam so much it moves to ban any commercial mail that is not specifically requested. User groups love the proposal, but a survey shows that spam couldn't be a huge problem: Only 14 percent of online Spaniards have any kind of anti-spam filter.

▼ Weakly Readers. The latest National Assessment of Educational Progress report for fourth-graders shows that 63 percent of black students, 60 percent of poor kids, and 47 percent of all children in urban schools fail to reach basic grade levels in reading.

▼ Clueless Train. Journalists are still ripe for spoofing and scamming, the Seventh Annual Survey of the Media in the Wired World finds. Only 44 percent would not use a Web chat room or newsgroup posting as sources for stories. No response on how many would use notes tacked to a tree in the middle of the woods.

▼ The Hamburglar. A vegetarian lawyer sues McDonald's for millions of dollars in damages over its supposedly "secret" spiking of french fries with beef fat. The chain says that it has never claimed to be a vegetarian bastion and that it provides ingredient info to anyone who asks for it.

▼ Search and Destroy. The U.S. Supreme Court rules 5–4 that cops are one step closer to being judge and jury than anyone thought. They can handcuff anyone for roadside stops and not worry about Fourth Amendment protections against unreasonable searches and seizures. Next on the docket, body cavity searches for failing to wear a seat belt.

▼ Marketing Majors. Sens. Joseph Lieberman (D-Conn.) and Hillary Clinton (D-N.Y.) team up to introduce legislation to fine the entertainment industry for selling the wrong stuff to children. The Federal Trade Commission could fine violators up to $11,000 a day for "marketing" sexually explicit or violent entertainment to kids. "That's not censorship. That's common sense," Lieberman explains.

LIABILITIES

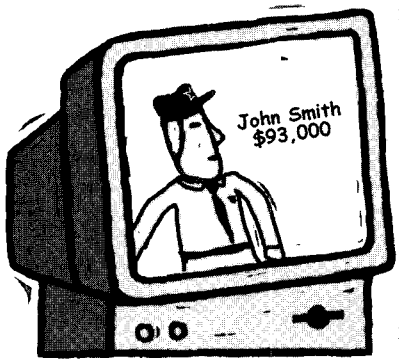
under the sway of industry lobbyists, so only new law can fix it. Expecting the Copyright Office to set things straight is just too much to ask when such fundamental issues as who has a right to what are involved.

Policing the Net

By Jeremy Lott

Is listing police officers' names, phone numbers, addresses, salaries, and Social Security numbers on a Web site the high-tech equivalent of yelling fire in a crowded theater? That was the argument made by the city of Kirkland, Washington, in March when it filed suit in King County Superior Court against anti-government gadfly William Sheehan.

Kirkland City Attorney



Bill Evans argues that the site, JusticeFiles.org, is an "abuse" of free speech that threatens the police officers' privacy and safety. True, the information on display is already publicly and legally available. But, Evans argues, "Regardless of the source of the information, if you violate someone's privacy with your use of it, that doesn't make it legal."

This is not the first time Sheehan has found himself in a flap over his online activities. To date, JusticeFiles and its predecessors have battled with a private collections agency, with state representatives who voted to fund the Seattle Mariners' baseball stadium, with jittery network hosts, with angry pro-privacy hackers (the site was only intermittently available during the writing of this story), and with scores of police departments who refused—or tried to refuse—his requests for public disclosure of information.

The case bears some resemblance to the recent flap over "The Nuremberg Files," a site that lists the names and addresses of abortionists and crosses out those who have been killed. A 9th Circuit court ruled in March that the anti-abortion site is protected speech. For its part, JusticeFiles assures its readers that it does not advocate violence: "No actual police were harmed during the testing of this product.... [K]eep in mind that the same information we present here, is information that the police themselves have easily at their disposal when they investigate us."

Because the information posted on the site is legally available to anyone through public disclosure documents or private information gathering agencies, ▶

QUOTES

"Jefferson either engaged in such abuse himself or tolerated it on the part of one or more members of his extended family....**There was, for all his brilliance and sagacity, something dishonest, something self-serving and self-indulgent about the man."**
—Paul Rahe, professor of history at the University of Tulsa. Rahe was the only dissenting member of a panel of historians whose report on Thomas Jefferson's relationship with his slave Sally Hemings was released on April 12. The rest of the group decided it was unlikely that Jefferson had actually fathered children by Hemings.

"It's your War on Drugs, folks. You can't vote for it, fund it, endorse it...and then say, **'No, we never meant ...to end up murdering a Christian missionary and her baby in some jungle somewhere.'"**
—Vin Suprynowicz, writing about the Peruvian Air Force's shooting down of a seaplane near the Colombian border, in the May 6 *Las Vegas Review-Journal*. The plane, which carried American missionary Veronica Bowers and her 7-month-old daughter, was shot down with the help of a U.S. "civilian" drug war crew under contract to the Central Intelligence Agency.

BRICKBATS

◆ Authorities in Kish, an Iranian island popular with tourists, have banned neckties, on the grounds that they're a symbol of decadent Western culture.

◆ The San Diego City Council has banned the word "minority" from city documents and discussions, arguing that the word is disparaging. No word yet on what they propose to call council members who do not vote with the majority.

◆ During Passover, Israeli inspectors searched cafés, restaurants, and bars for bread and other leavened products. Jewish law—and since 1993, Israeli law—bars the eating of such foods during Passover. But this is the first year the law has been enforced, and even some of the lawmakers who wrote the rule were upset.

◆ John Thoburn has been sitting in a Virginia jail for almost two months as this is written. His crime? Zoning violations. You see, when Thoburn built a golf course, he found that local zoning authorities couldn't make up their minds about how he should build it. Take one 365-foot man-made hill that's on the course. At first, the regulators said it was too tall. Then they said it was too low. They finally decided it was just right—but they want him to pay the fines accrued while they were dithering. They also insist that he put trees in the wrong place: There are 10 in one cluster, not the eight the zoning board wanted.

Kirkland may find itself in the unenviable position of arguing that it is permissible to procure this information but not to pass it along to others.

Railway Bandits

By Michael W. Lynch

Amtrak manages to lose money on 39 of its 41 routes, but that doesn't stop it from making a killing off some of its customers. In Albuquerque, New Mexico, Amtrak officials cut a deal with the Drug Enforcement Administration: In exchange for giving the drug police access to its booking system, Amtrak gets 10 percent of any money the cops take from hapless passengers.

In February 2000, the deal helped Amtrak make $14,700 off Sam Thach, who was traveling from Fullerton, California, to Boston. When the train pulled into the Albuquerque station, DEA agents relieved him of $147,000. Did Thach possess any drugs? No, but he purchased his one-way ticket with cash, and he failed to give Amtrak his phone number. So the DEA seized his cash under forfeiture rules that have since been changed. Thach is now suing in federal court to get his money back.

More recently, on April 5, 2001, the DEA seized $640,000 from Jennifer Leigh Ames, who was traveling from Chicago to Los Angeles. Apparently, she had looked nervous and—worse yet!—had refused to grant agents permission to search her belongings.

Since Amtrak's deal was first reported earlier this year in the *Albuquerque Journal*, the railroad has been on the defensive. It claimed the bargain is one of a kind, but in an e-mail to the *Journal*, Amtrak said it "will, on request, participate in and provide information for law enforcement." (Amtrak didn't return REASON's calls for clarification and won't cop to how much it has earned from its train heists.) On April 25, the railroad announced it would no longer provide the DEA direct access to the reservation system. Amtrak will do the snooping itself, and exchange tips on its passengers for 10 percent of the DEA's take.

For its part, the DEA sees nothing wrong with the arrangement. Spokesperson Rogene Waite says the agency has similar deals with bus companies and airlines, but she won't discuss them.

Waite's also mum on whether the DEA's infiltration of Amtrak's reservation system is nationwide or limited to New Mexico. Evidence suggests the former. A September 1999 story in the Newark, New Jersey, *Star-Ledger* explains how DEA investigators in Washington, D.C., figure out who to target. Investigators told the paper, "Suspicious signs include people who pay cash for expensive, one-way tickets at the last minute, or whose phone

☛ "Ronald Reagan has been making a great deal of hay in the primaries with a demagogic and jingoistic campaign on behalf of maintaining the alleged sovereignty of the United States over the Panama Canal and the Canal Zone....One neglected point is that the Canal Zone is an egregious example of socialism in action, since the U.S. government owns not only the Canal but the entire Zone territory, and every Zonian is a U.S. government employee. How can an alleged opponent of Big Government devote so much energy to a persistent defense of an enclave of U.S. socialism?"

—Murray N. Rothbard, "The Panama Canal Caper"

☛ "Will society collapse from...defiance of authority?...There is hope because millions of people across this land keep on getting their jobs done, building their communities, and creating reasonably satisfactory lives for their families, all by generally ignoring edicts and fiats imposed on them by all sorts of would-be managers."

—John McClaughry, "De-Managing America"

number turns out to be bogus. Getting a sleeper car but not checking any luggage is on the list." Without access to travelers' booking information, how would the cops know any of this information?

The American Civil Liberties Union worries that the police are targeting minorities (which the cops of course deny). Still, sometimes they target the wrong minorities. Carlos Hernandez, a former Newark policeman, knew his rights when he found officers inspecting his sleeper cabin on July 22, 1999. The cops told him they wanted to search his luggage because they had been tipped that he had a large amount of narcotics. "I'll bet my kids' life they looked at the train's manifest, saw a Hispanic riding first class, $694 round-trip ticket, and they just wanted to shake me down," Hernandez told *The Star-Ledger*, noting that the police broke the law by entering his cabin without a warrant and without his permission. "You went into my cabin, that's burglary," he said.

It certainly is, except when the burglars have badges—and conductor's watches.

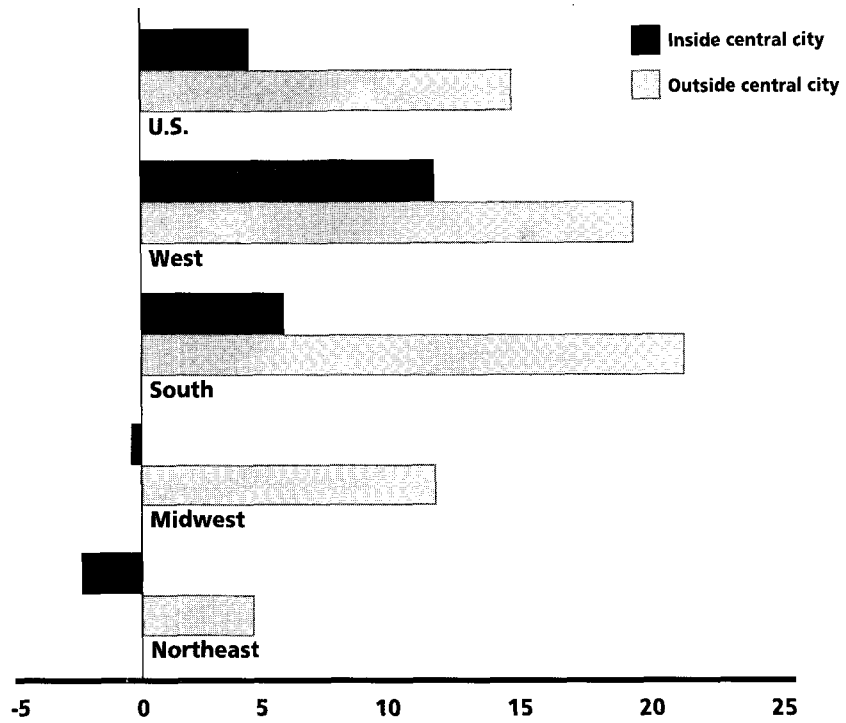
DATA

Pleasant Valley Sunday

By Nick Gillespie

As the U.S. Census Bureau releases data from its 2000 tally, there's good news and bad news for America's cities. Among the good: Some 80 of the nation's 100 largest cities gained population between 1990 and the end of the century, showing that urban life still has appeal for many, especially recent immigrants. City population grew by 4.1 percent overall. Among the bad: That figure was dwarfed by growth in metropolitan areas outside central cities, also known as the suburbs, which boomed by 14.2 percent. Plastic they may be, but people want to live there in bigger and bigger numbers.

Percent Change in Metropolitan Population Inside and Outside Central Cities, 1990–1999



SOURCE: U.S. CENSUS BUREAU

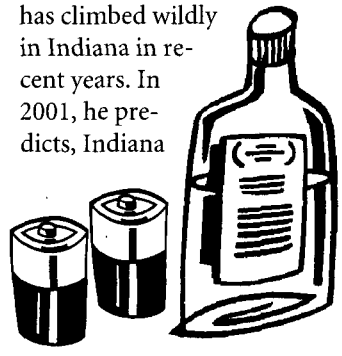
Betty Crocker's Crystal Meth

By Sara Rimensnyder

"Most people, unfortunately, don't know anything about how methamphetamine is made." That's for sure. But it's surprising to hear such a statement coming from an agent of the Indiana Drug Enforcement Association: Gary Ashenfelter, speaking to the Associated Press.

Ashenfelter was commenting on Indiana's new plan to curb meth production. In stores across the state, police officers are taping up posters listing the ingredients needed to make the drug, also known as crystal, ice, and perhaps a dozen other names. You might think that such a poster could create a fresh crop of trailer-park chemists. But that's not the plan. Cops are hoping that shop clerks will report customers making "suspicious" purchases of a variety of typical supermarket items.

You see, like lemonade, meth is cheap and easy to make—but a great deal more profitable. Ashenfelter says the production and use of methamphetamine has climbed wildly in Indiana in recent years. In 2001, he predicts, Indiana police officers will bust 800 labs.



The informational poster now in Indiana stores lists—cover your eyes—such everyday ingredients as acetone, coffee filters, cold medicine, drain cleaners, lithium batteries, and lye.

Clearing the Air

By Jeff A. Taylor

New Delhi's 13 million souls and its claptrap vehicle fleet of 2 million help ▶

BRICKBATS

◆ In Davidson, North Carolina, police officer Scott Searcy searched a woman's car after noticing that it contained a publication whose cover featured a photo of a marijuana plant. He thought it was *High Times*; in fact, it was a local weekly that happened to include an article about police using helicopters to find pot. "He acted properly," insists Assistant Police Chief Butch Parker. "He had reasonable suspicion, and we do too." The search turned up nothing illegal.

◆ In response to an Internet campaign urging Aussies to list their religion as "Jedi" on the census—on the grounds that if enough people do this, the government will allegedly have to recognize the *Star Wars* order as a legitimate religion—the Australian government has warned citizens that providing false information on the census is a crime. But how will they prove someone isn't really a Jedi?

◆ Chinese customs officials have confiscated 16,000 copies of a book of photographs of Bill Clinton with world leaders and famous personalities. Seems that one of the photos shows him shaking hands with the Dalai Lama.

◆ A British court has found Steven Thoburn guilty of selling bananas by the pound; he now faces a fine of up to $1,500 for each offense. Under European Community rules, all goods except draft beer must be sold in metric measures.

—Charles Oliver

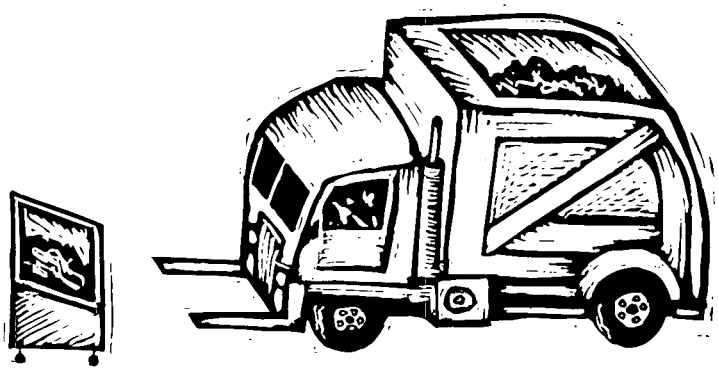
produce some of the world's most horrid smog. Two years ago, India's Supreme Court decided that it could fix that. It decreed that public transport vehicles in the city must use compressed natural gas (CNG). The deadline for the switchover was April.

So New Delhi's air must be much improved by now? Not exactly. When the deadline hit, mobs of jobless bus workers burned five buses and damaged another 39. Generic rioting broke out. A bus fleet of 13,000 was cut to 1,400. The city ground to a halt.

The court responded with a 10-day extension, giving the city government a little more time to issue temporary operating permits to vehicle owners who'd placed orders for CNG vehicles or conversion kits but didn't have them installed yet. But the court can do nothing about the cost. Some $114 million must be spent buying new buses, refitting old ones, and finding ways to deliver the new fuel to would-be users. Only 43 gas stations in New Delhi can now sell CNG, and everyone knows that isn't enough.

"I spend at least four hours every day now waiting in queues," Naresh Chand, 60-year-old owner of a new CNG-compliant auto-rickshaw, complained to *The Washington Post*. "My earning has dropped from $6 a day to $2 now because of these queues. What do I feed my family? First I have to live. I will think about clean air later."

That, in handy capsule form, is the issue. How do poor countries move to create what are in effect luxury public goods, like clean air? A toughie to be sure, but edicts from on high usually do more harm than good.



Waste of Energy

By RiShawn Biddle

When Foster Wheeler Corp. secured financing for its $400 million trash-to-energy plant in Robbins, Illinois, the engineering concern barely contained its joy. "This will be the most modern waste-to-energy installation in the world," it raved in a 1994 press release. Seven years later, the plant is in bankruptcy. Foster Wheeler lost $261 million on the misadventure. Investors who bought $321 million in bonds will be lucky to get back just 35 to 45 cents on the dollar.

Another eco-bust: the BCH waste plant in Bladen County, North Carolina. Built by a group that included three local governments, the plant was shut down after its equipment failed. Banks that lent $70 million retrieved just 4 cents on the dollar.

You can thank government for these uneconomical exercises. In the '70s, politicians in love with alternative energy fashioned laws to force garbage haulers in certain areas to participate and pay above-market trash disposal fees.

In 1994, the Supreme Court ruled in *Carbone v. Town of Clarkston* that governments could no longer win customers at gunpoint. The result: 37 waste-to-energy plants have been shuttered since 1993, according to Government Advisory Associates, a Westport, Connecticut, consulting group. Taxpayer bailouts keep the rest—about 100—afloat. For instance, when the McKay Bay waste plant in Tampa, Florida, couldn't pay off debt service or for upgrades, the city issued $193 million in bonds to save it.

And waste fuels live on. The federal government gives a tax credit of 1.5 cents per kilowatt-hour for electricity produced from poultry and wood wastes, and five senators have proposed extending the credit to other biomass fuels. California has granted $57 million since 1998 to 28 firms, and the feds spent $95 million on waste-to-energy research last year.

They haven't reached any breakthroughs yet. Turning smelly garbage into clean energy may sound terrific, but in practice, it turns out—ironically—to be wasteful.

Brussels' Broad Brush

By Charles Paul Freund

Seems the sun never rises over Europe anymore but that the new day isn't accompanied by new rules to live by. Parisians have awakened to learn that much of their beloved cheese failed to conform to new European Union microbe norms. Londoners have risen to find that

British labor law as developed under Margaret Thatcher didn't conform to new EU work norms. And this spring, the men of Iesolo, Italy, woke to the fact that their barbers were violating EU shaving norms.

Yes, shaving norms. If a nation wants to enjoy the benefits of the Euro, its barbers must stop using shaving brushes to lather up their customers' beards. According to EU bureaucrats in Brussels, traditional brushes (which long ago disappeared from American barber shops) are unhygienic; by banning them, they plan to keep Europe's faces in uniformly good shape.

The barbers of Iesolo, a little town near Venice, had failed to take notice of this change until April, when Daniele Bison, head of the town's council, asserted his leadership. "I have taken the decision," Bison told the press decisively, "that Iesolo should conform to European norms."

For the barbers of Iesolo, this came as a prickly surprise. First, no other Italian community, big or small, had paid the slightest attention to

this rule. Second, no one in Iesolo had ever complained about the use of brushes. Third, no health problem seems ever to have arisen from the brushes, which anyway are boiled after each use. Fourth, the new techniques of lathering—hot lather spewed from machines, then spread while wearing gloves—are expected to increase the cost of a shave. Fifth, more expensive shaves will probably mean that more men will shave at home, and thus that some barbers will be out of work.

So why create this hairy problem? Bison didn't say. Perhaps it was shear malice.

SOUNDBITE

Rich Response

By Michael W. Lynch

Joel B. Slemrod

It was a bedrock belief of the supply-side economic policy revolution of the 1980s that people work more when taxed less. Such thinking hardly passed from the scene when Ronald Reagan rode off into the sunset, or even when George H. Bush reneged on his "no new taxes" pledge. Indeed, the current Bush in the White House is pushing his proposed $1.6 trillion tax plan partly on supply-side grounds.

Does Atlas Shrug?, a collection just published by Harvard University Press, explores how the rich—defined variously as the top 1 percent, .5 percent, and .1 percent of earners—actually respond to taxes. (The book's title alludes to Ayn Rand's bestselling 1957 novel, *Atlas Shrugged*, in which the world's most productive "men of the mind" go on strike to protest what they see as unfair conditions.) National Correspondent Michael W. Lynch caught up with the book's editor, University of Michigan economist Joel B. Slemrod, in mid-April.

Q: Why focus on the rich?
A: The richest 1 percent of Americans earn a disproportionate amount of income and pay an even more disproportionate amount of taxes. They have a high fraction of savings and wealth. So there's no question that in terms of dollars and economic impact, they are more important than just your average one out of 100 people. How much of any tax break goes to the top 1 percent is also a very hot political issue.
Q: Do the rich respond to tax incentives? You write that the '90s, an economic golden age, were a time when marginal tax rates were extremely high.
A: The rich certainly respond to the incentives caused by taxation. But there's a hierarchy of response. The most responsive type of behavior is the sort where, if you change the timing of some activity, you can lower your taxes; capital gains realizations are a prime example. A second type of behavior includes accounting and financial responses. Firms are fairly willing to adjust their financing, their dividend payouts, and the like in response to taxation. The bottom rung of this hierarchy is what I call real behavior—labor supply and savings decisions. On the whole, those are not that responsive to taxation.
Q: So how much people work is not that responsive to the marginal tax rate?
A: Right. Quantitatively, there's not that large of a response. The one exception is the labor-market participation rate of married women. This conclusion is based on studies that look at variations in tax rates in points of time and variations in tax rates over time.
Q: What are the economic implications of the proposed Bush tax cuts?
A: There are positive incentives from lower taxes, but they are not so large that we could expect this to be a panacea, a sure-fire way to ensure prosperity over the next generation. So it matters, but it's not the only thing that matters.

Bleeping on the Job

In which our man in Washington visits the halls of justice to witness gross obscenities and a towering pompadour.

By Michael W. Lynch

Subj: Legal Speak
Date: 4/11/2001
From: mwlynch@reason.com

Quality entertainment in D.C. isn't limited to congressional committee rooms, the House and Senate floors, think tank auditoriums, and black tie dinners. Federal courts can be a real hoot as well. To wit, the classic comedy playing to rave reviews at the United States Court of Appeals for the District of Columbia Circuit. It's called *Adtranz ABB Daimler-Benz v. NLRB.*

The story thus far: Adtranz, a refurbisher of cars for California's Bay Area Rapid Transit System, was arguing before the court that its prohibition against "using abusive or threatening language to anyone on the company premises" does not constitute an unfair labor practice under Section 8 (a)(1) of the National Labor Relations Act. The case arises from an unsuccessful attempt by the International Association of Machinists and Aerospace Workers to organize Adtranz's plant in Pittsburg, California. On December 9, 1998, employees there rebuffed the union's overtures by a vote of 135 to 79. Duly spurned, the union set out to find a pretext to declare the vote invalid. So it brought a bunch of charges to its benefactors at the National Labor Relations Board, the D.C. bureaucracy that enforces the National Labor Relations Act. Among the complaints was the assertion that management's prohibition of verbal assault was an unfair labor practice. How the fuck, the union essentially asked, do you expect us to organize without abusive and threatening language?

Adtranz's policy is a standard-issue set of rules designed to protect companies from "hostile workplace" suits. The policy predated organizing activity at the facility, and the union doesn't even allege it was used against organizers or employees. Still, the NLRB ruled against Adtranz, overturned the election, and ordered a new one, since the company's prohibition of "abusive and threatening" behavior didn't explicitly exempt such activity during unionization drives. The NLRB also demanded that management apologize and openly declare that it wouldn't restrict abusive speech, so long as it was uttered in the context of labor relations. Adtranz appealed the ruling in federal court.

The actual hearing—which I'll get to in a moment—had more raw entertainment value than a World Wrestling Federation match. It was also, in its own way, equally rigged.

But the fun in this case started long before the judges got in on the smackdown. The NLRB's position was helpfully bolstered by a brief filed by David Rosenfeld, an attorney for the unsuccessful union. Rosenfeld compiled numerous NLRB cases to prove his point that "language that is intemperate and profane in some sectors of civil society is part and parcel of vigorous exchange that often accompanies labor relations."

What's most amusing about Rosenfeld's brief is how it deconstructs the supposed solidarity among various parts of the nation's coalition of left-of-center interest groups. The brief makes it hilariously clear that the interests of labor and its more socially sensitive comrades may not be as simpatico as is commonly assumed. While organized feminists, gays, and civil rights advocates push for working environments free from harassment, unions maintain that their members have an absolute right to say pretty much anything at work.

Even Camille Paglia–style feminists might be a little disturbed that their allies in the labor movement express their grievances via the most debased gender terms. Writes Rosenfeld: "In [one case], during the course of contract negotiations, a union representative grabbed his crotch and said, 'Suck my dick you bitch.' Union representatives also said to supervisors, 'I'm tired of her shit, she is always bossing people around'; 'Who the fuck does she think she is?'; and 'Fuck you, bitch.'"

Who, indeed—she must have thought she was the boss or something. Rosenfeld underscores that these are examples of *protected* workplace speech, under federal labor law. Things will really get interesting, especially in Women's Studies departments, if and when the nation's graduate students finally undertake the unionization drive they keep threatening universities with.

If nothing else, Rosenfeld's brief underscores that the industrial-era Us vs. Them mindset is more than a little outdated in a day when women and minorities have made it into management. In another case, writes Rosenfeld, "A union bargaining representative said 'fuck you' repeatedly to management negotiators; said in front of an African American management negotiator that union members were tired of being treated like 'niggers.'" The NLRB found

HENRY PAYNE

"no purpose focusing on the [union rep's] occasional, ill-advised profanity and his sexist and racist comments."

Meanwhile, back at the Court of Appeals, the judges had read Rosenfeld's brief and the NLRB ruling. Presiding at the hearing were David Sentelle, Larry Silberman, and Karen Henderson—and an official portrait of Robert Bork, who worked here before his nomination to the Supreme Court. You may recall that Sentelle presides over the panel that oversees Independent Counsels, and hence appointed and supervised the work of one Kenneth Starr. Here's a little tourist advice: If you find yourself in D.C., check the court's Web site at www.cadc.uscourts.gov. If Sentelle is slated to hear a case, pop into his courtroom for an hour; he's far more entertaining than the IMAX nature film at the National Museum of Natural History.

Mark Ross, an attorney for Adtranz, went first. The imperious Judge Sentelle, seated in the center of the dais, his gray hair coifed in a formidable pompadour, his black robe broadening his shoulders, interrupted Ross as he went through his argument.

"Can you imagine a counsel for a large employer today *not* advising his client to put in" a rule like this one banning abusive language?

"Not unless he has a lot of good insurance," replied Ross, as chuckles came from the bench.

"Malpractice insurance," added Sentelle.

That is, in fact, the heart of the matter. Under federal and state law, an employer is obliged to provide a harassment-free workplace. If a law that prohibits abusive and threatening speech in the workplace is an unfair labor practice, then virtually every large employer in the country is violating the National Labor Relations Act.

The judges took this up with Jeffrey Horowitz, who was carrying water for the NLRB. To put it bluntly, the judges appeared more than a wee bit skeptical as to the merits of the NLRB's case.

"Why is my hypothetical not correct?" asked Judge Silberman, who spars in a more reserved tone than his colleague Sentelle. "Every employer who has this rule in its handbook is in violation of Section 8 (a)(1)."

"In other instances where an employer may have other rules that are more clearly..." stammered Horowitz.

"No!" boomed Sentelle and Silberman in unison. "This is a very standard Title VII protection. It's a due diligence rule," continued Silberman. "Why isn't every large employer in the country who is following due diligence with a workplace rule like this not immediately liable for an unfair labor practice?"

The NLRB lawyer never could answer this question.

"To be directly responsive," replied Horowitz as he tried to come up with a rejoinder, the Adtranz policy "is so broad, to rule out abusive language...."

"Why in the world is it an unfair labor practice to prevent employees from creating a hostile workplace?" demanded Sentelle. "What would be a rule that would accomplish the purpose of this rule that wouldn't violate [the NLRB's ruling]?"

Horowitz blurted out something that might be classified as non-responsive, off-topic, or just plain stupid. Sentelle kept at him.

"What would be a rule that they could put in their handbook that somebody with less than a law school education could read and make some kind of sense of...[that] you would say would survive what the Board did?"

"Counsel is indicating..." said Horowitz.

This sent Sentelle off into a fit that seemed to please four young groupies who were enjoying the proceedings. Even the law clerks cracked smiles.

"Counsel is not indicating anything!" bellowed Sentelle. "My question is that you give me a rule...that would [pass the NLRB's test] and still provide a company with due diligence."

"It might be sexual harassment," offered Horowitz.

"You are not hearing my question," replied Sentelle. "Give me an example of a rule, read me the words of a rule."

"You put me at a disadvantage," protested Horowitz.

"I certainly do," said Sentelle. "You are at a terrible disadvantage when you try to defend a decision like this."

"If you have a limited rule," said Horowitz, "such as employees are not allowed to engage in sexual harassment of other employees."

"Define sexual harassment," replied Sentelle. "*Any* sexual harassment? If a labor organizer gets irritated...and uses the 'B' word to a female employee, that would be covered?" Sentelle, of course, knew it wouldn't be covered by a company policy if the NLRB has its way.

"Why in the world is it an unfair labor practice to prevent employees from creating a hostile workplace?" demanded the judge.

At this point, had Horowitz not been such a trouper, he would have simply admitted that the NLRB is hopelessly in the pockets of the unions and that its ruling, which is absurd on many levels, is an indefensible example of the torment the NLRB puts employers through, day in and day out. But Horowitz didn't cop out. He soldiered on.

"These rules have a chilling effect."

"Why is it a good thing to use abusive language?" asked an incredulous Sentelle. "Is chilling that language a bad thing?"

"If that language is used in a context of asserting a [protected right]," responded Horowitz.

"I don't care what the context is," replied Sentelle. "You have an employee that uses the racial epithet that the counsel sets forth as protected. Is that a good thing?"

It's not necessarily a good thing. But according to Rosenfeld, who maintains that we can't expect industrial workers to speak any other way, allowing such speech in the workplace is a *necessary* thing. The NLRB considers it a legally protected right.

Somehow, I doubt this court will agree.

Cathy Young

McVeigh to Macbeth

The difference between revenge, retribution, and right

America's long-simmering debate over capital punishment reached a boiling point this spring as the scheduled execution of Oklahoma City bomber Timothy McVeigh approached. Several polls showed overwhelming approval for McVeigh's execution—up to 80 percent—but also a good deal of ambivalence about the death penalty in general.

For opponents of capital punishment, McVeigh's date with death became a test case for the consistency of their stance, even when it comes to the most heinous crimes. The arguments are familiar: Killing a murderer, critics say, reduces us all to his level and amounts to "legalized revenge." Writing in the *Los Angeles Daily News*, Elisabeth Semel, director of the American Bar Association's Death Penalty Representation Project, saw a special, sinister irony in the case. McVeigh viewed his deed as vengeance for the 1993 deaths of the Branch Davidians in Waco, Texas. His own executioners, wrote Semel—making an argument echoed by a few other commentators—were simply perpetuating the grisly cycle of hate and revenge.

The argument that state-sanctioned killing is a bizarre way to reinforce the message that killing is wrong seems, on the face of it, convincing. One might think, too, that supporters of limited government should be especially troubled by the notion of placing the power of life and death in the hands of the state.

Yet many libertarians who are generally wary of expanding the prerogatives of law enforcement see, at the very least, no philosophical contradiction between small government and capital punishment. (Nor, obviously, did America's classical liberal Founders: The Bill of Rights offers guarantees only against being deprived of life without due process.)

Roger Pilon, vice president for legal affairs at the Cato Institute, points out that in Lockean liberalism, the government derives legitimate authority from the consent of individuals who agree to delegate to it some of their natural rights—including, in most circumstances, the right to use justifiable force. In the hypothetical state of nature, says Pilon, "When A takes B's life intentionally and gratuitously, he alienates his own right to life and creates in B or his heirs a right to take A's life. It's more than a right of self-defense; it's a right to right wrongs. And it is that right that we ask government to exercise on our behalf."

If the government's monopoly on the use of force is legitimate, then, like it or not, the state may commit acts that would be criminal and immoral if committed by individuals. This extends not only to capital punishment but to all lesser penalties: If execution is legalized murder, then imprisonment is legalized kidnapping. One could argue that the taking of a life is radically different from other forms of force, but confining a person to a six-by-six cell for life is still a pretty drastic form of coercion.

But the more interesting philosophical issue is whether capital punishment is in fact a form of vengeance—and, if so, whether that makes it bad.

An intriguing dissent from the standard anti–death penalty view is offered by Susan Jacoby, author of a thought-provoking book called *Wild Justice: The Evolution of Revenge* (1983). Both in the book and in a recent article on the McVeigh execution in *Newsday*, Jacoby argues that although the death penalty is beneath a civilized society, revenge or retribution—the desire to make the offender "pay" for his crime and to "express society's outrage at serious violations of its norms"—is inherent in all forms of punishment and is an important purpose of the justice system.

Jacoby treats revenge and retribution as synonymous, but perhaps there is a subtle difference. The targets of McVeigh's "revenge" had the most tenuous connection to the perpetrators of the Waco raid. In other cases, private vengeance may be directed at the wrongdoer's relatives or loved ones. (Imagine the reaction if someone were to suggest exterminating McVeigh's family as "payback.") Vengeance may also be disproportionate to the offense and unconcerned with intent. If a child is killed in a car accident, the parents in their grief and rage may well want to see the driver dead, even if he was blameless or at worst negligent; in a few cases, they may even act on that wish. Yet we can hardly imagine official authority carrying out such revenge.

Retribution, on the other hand, addresses moral culpability. This is perhaps most forcefully revealed by the reaction to executions of people with diminished mental capacity. In 1992, the execution of Ricky Ray Rector in Arkansas sparked a controversy not only because then-Gov. Bill Clinton took time off from the presidential campaign to fly back to his home state and sign the death warrant, but also because Rector was severely brain-damaged following a suicide attempt. One detail repeatedly cited as evidence of the barbarism of his execution was that on his way to the death chamber, Rector asked his lawyers to save the dessert from his last meal for later.

The story is cringe-inducing, but why? Not because of the suffering inflicted on the condemned; surely, it's far more cruel to send a man to his death when he is fully aware that there will be no "later." Rather, the issue is the defendant's perceived lack of moral agency, his inability to feel responsible for his act and to connect it to his punishment.

A number of conservatives, such as political scholar Walter Berns, author of *For Capital Punishment: Crime and the Morality of the Death Penalty* (1979), explicitly argue for the death penalty on

moral rather than practical grounds—as an act that affirms cosmic principles of right and wrong, one that repairs a tear in the moral fabric of the universe. To illustrate this idea, Berns turns to Shakespearean tragedy, asking, "Can we imagine the play in which Macbeth does not die?"

In her 1995 book, *It's All the Rage: Crime and Culture*, Wendy Kaminer dismisses Berns' grandiose vision, in which capital punishment is a moral act in response to a purposeful evil, as a poetic fable. "There are no Macbeths on death row," she writes. "Instead there are dull-witted people, damaged and crazy people, along with inexplicably cruel people whose sordid, secret deaths do nothing to set the universe in order."

Empirically, it's hard to tell which picture is more accurate. McVeigh's actions were certainly purposeful (and a modern-day forensic psychiatrist could undoubtedly mount an impressive insanity defense for Macbeth). Yet there is a certain irony in the fact that Berns' argument for the death penalty seems to be more respectful of human dignity and free will than Kaminer's argument against it.

Whatever one thinks of these two views of human life, does the criminal justice system have a function beyond protecting the basic rights of law-abiding citizens? If the state does have a role in affirming the moral order, where does that role stop? For Berns, as his other writings make clear, it extends to censorship of "immoral" materials (which is certainly a red flag). And yet it's fair to say that the notion of a legal system that is not moored in some principle of right and wrong would appeal to few people.

Timothy Lynch, director of the Cato Institute's Criminal Justice Project, does not see moral arguments for the death penalty as a slippery slope. In his view, "We can distinguish between a total state-imposed value system on the one hand, and passing moral judgment on violations of rights."

But while Lynch does not reject capital punishment on ethical or constitutional grounds, he says he has come to oppose it on practical ones. "To support the death penalty requires placing your trust in state actors in our criminal justice system: police, prosecutors and the courts," says Lynch. "That trust has been betrayed too many times. There have been so many mistakes and actual misconduct, it just does not warrant our support for something like the death penalty, where the results are irreversible."

Lynch echoes a view that surveys suggest is increasingly common. In a *Washington Post*–ABC News poll conducted in April, 63 percent of respondents—down from 77 percent just five years ago—theoretically favored the death penalty for murderers. But 68 percent said they were troubled by the possibility of innocent people being put to death, and 63 percent thought the death penalty was unfair because of its uneven application from state to state and county to county (and, one might add, from defendant to defendant, including co-defendants in the same case). More than half supported a temporary halt to executions until issues of fairness and wrongful convictions are sorted out.

One could argue that the taking of a life is radically different from other forms of force, but confining a person to a six-by-six cell for life is still a pretty drastic form of coercion.

The marked drop in support for the death penalty is undoubtedly related to the publicity surrounding the cases of people who have been released after years of imprisonment, sometimes on death row, when their convictions were overturned due to DNA tests or other evidence. A widely covered 1998 conference at Northwestern University School of Law in Chicago featured 28 exonerated former death row inmates; Northwestern law professor Lawrence C. Marshall, who organized the conference, told the media that there had been a total of 75 such cases since the Supreme Court reinstated capital punishment in 1976.

Death penalty proponents such as University of Utah law professor Paul Cassell suggest that the media attention to wrongful convictions is part of a well-orchestrated anti–capital punishment campaign. But even if that is true, it doesn't make these cases less troubling. Nor is it much of a consolation to argue that, since none of these innocents were executed, "the system worked." Others may not be so lucky, particularly given the push to streamline the appeals process.

Unless there is actual evidence that the death penalty saves the lives of potential victims, the argument that one innocent person executed is one too many seems quite compelling. At the very least, such concerns justify calls for a moratorium on executions. Illinois has imposed such a moratorium, and 19 other states are considering similar action.

It would be possible not only to find common ground, but even to break new ground in the debate about capital punishment if supporters were more willing to confront the danger of wrongful execution, and opponents were more willing to recognize the legitimacy of retribution—or, as Pilon puts it, of "righting wrongs"—as an element of justice. Execution, after all, is not the only way to exact retribution.

Perhaps, *pace* Walter Berns, we can even imagine the play in which Macbeth does not die. In the final scene, when Macbeth realizes that Macduff is the man destined by the witches' prophecy to take him down, he refuses to fight. "Then yield thee, coward," says Macduff, "and live to be the show and gaze o' the time;/We'll have thee, as our rarer monsters are,/Painted upon a pole, and underwrit,/*Here may you see the tyrant.*"

Faced with this prospect, Macbeth—like McVeigh—chooses to die. It's a more dignified "closure" for him, but not necessarily for the rest of us.

Contributing Editor Cathy Young (cathyyoung2@cs.com) writes a column for the Boston Globe.

Jesse Walker

Killing Corporations

The movement to revoke corporate charters has gotten its history confused.

Let us consider the abuse of language, and the abuse of history.

Last year, then–State Rep. Barbara Pringle (D-Cleveland) sent an unusual letter to Ohio's attorney general. The Cleveland Clinic, she noted, intended to shut down two local hospitals; the city council, in an attempt to save them, had tried to take them by eminent domain. The courts had blocked this, and the hospitals were still slated to be closed.

"In an effort to limit health care accessibility to local communities," Pringle concluded, "the Cleveland Clinic has forfeited its privilege to continue as a legitimate non-profit corporation. By definition, a health care corporation has a duty to provide health care....To protect the health of the people and to prevent the public mischief that is being done, I urge you to bring a *quo warranto* civil action against the Cleveland Clinic revoking their corporate charter."

You will not be surprised to learn that Pringle's request went nowhere. You may well be surprised to learn that her demand is not unique, save perhaps for the fact that it was being enunciated by a legislator. In California, the National Lawyers Guild has twice petitioned the state to revoke the oil company Unocal's charter, citing everything from allegations of forced labor to "contributing to climate change while funding a researcher to throw doubt on climate-change science." In Alabama, retired judge William Wynn has tried to revoke the charters of five tobacco companies, accusing them of (among other things) "endangering the welfare of a child" and "unlawful distribution of material harmful to a minor." And the northern California town of Point Arena passed a resolution last April declaring that corporations "are artificial entities separate and apart from natural persons," protesting more than a century of jurisprudence extending individual rights to incorporated businesses.

For a significant slice of the modern left, the key to controlling errant businesses lies in two facts about corporations: that the law treats them as though they were people, and that their charters can be revoked. The first fact, we're told, shows the extent to which business has usurped power in America, claiming rights for itself that ought to belong only to you and me. The second is the path to freedom: a way to put citizens back in charge and corporate criminals under control.

Yet corporate charters are rarely revoked. (When the Lawyers Guild submitted its petition in California, it found that the state's last revocation took place in 1976.) Unocal still operates, and Wynn failed to drive corporate cigarettes from Alabama. Even the Point Arena resolution had no practical effect on the law: After much strong language, it merely expressed the opinion that corporations are not people and announced that the city would "encourage public discussion on the role of corporations in public life."

The movement to revoke charters—as one slogan has it, to give corporations the death penalty—is notable less for the influence it's likely to have on American society than for the influence it has already had on the political left. The rhetoric it uses and the precedents it invokes seem to hearken back to earlier critics, including those Jacksonian-era libertarians who railed against both state power and the moneyed interests that suckled at the government's teat. The new movement, however, is something else entirely, a mishmash of confused language and sloppy history that has less to do with ending special privileges than with restricting freedom of association and freedom of speech, for individuals as well as corporate bodies.

The revocation movement's account of history has been laid out in many places; one is *Taking Care of Business*, a 1993 pamphlet by activists Richard Grossman and Frank Adams. The tract notes that in the early 19th century, enterprises took many forms, from limited partnerships to unincorporated associations to cooperatives. "Legislatures also chartered profit-making corporations to build turnpikes, canals and bridges," the authors write. "By the beginning of the 1800s, only two hundred such charters had been granted.... Citizens governed corporations by detailing rules and operating conditions not just in the charters but also in state constitutions and state laws."

The pamphlet does not explain why a business would tolerate such restrictions, if all it need do to avoid them was not incorporate. The answer, of course, is that incorporation bestowed certain advantages. In those days, historian Robert Hessen notes in his 1979 book *In Defense of the Corporation*, corporate charters often included special privileges, such as "a legally enforced monopoly, exemption from taxation, release of employees from militia and jury duty, power to exercise eminent domain, and authorization to hold lotteries as a means of raising capital." Others received direct subsidies from the government.

Those benefits were awarded only to particular corporations. Another perk was conferred on just about all of them: The corporate form limited shareholders' liability for the corporation's debts, decreasing the risk of investment and allowing greater concentrations of capital. This is what Ambrose Bierce had in mind when he defined a corporation as "an ingenious device for obtaining individual profit without individual responsibility." There are those who argue that this practice could only exist with state intervention—that is, through incorporation laws. There are others, such as Hessen, who argue not only that it could emerge as a matter of contract, but that it *has* so emerged, and that incorporation today is merely a convenient legal shortcut. (This is separate from the issue of limited liability for harms caused to third parties, a legal doctrine that is

somewhat harder to defend.)

In any case, 19th-century libertarians fiercely opposed such charters. The more radical critics called for outright abolition of incorporation. Others, such as the journalist William Leggett, demanded an only slightly more moderate change in the law. Leggett wrote in the years surrounding and during the presidency of Andrew Jackson; he spoke from that wing of the Jacksonians that embraced the president's democratic reforms while attacking his support for slavery and his abuses of executive power. Sounding superficially like the modern revocation movement, Leggett wrote in 1834 that he would oppose "the granting or renewing of any special charter of incorporation whatever, no matter who may be the applicants, or what the objects of the association." And yet, he quickly added, he didn't want "to break up those incorporated associations the charters of which are about to expire....It is not against the objects effected by incorporated companies that we contend; but simply against the false principle...of special grants and privileges."

As an alternative, Leggett called for "one general law of joint stock partnerships," explaining, "There is nothing not perfectly equitable in the principle which exempts men from liability to any greater amount than the capital actually invested in any business, provided proper notoriety be given of the extent and circumstances of that investment." Under this law, he added, existing corporations could "go on precisely the same as if their special privileges had been renewed. The only difference would be that those privileges would no longer be special." Such laws were eventually passed, radically changing the nature of the corporate charter.

Grossman and Adams dismiss such arguments as corporate apologism. "Cynically adopting the language of early charter opponents," they write, "corporate owners and their lawyers attacked existing legislative charters as special privileges. They called for equal opportunity for all entrepreneurs, making it seem as if they were asking that everyone have the same chance to compete." But in fact, "these corporations were not just individual entrepreneurs," but "large accumulations of capital" enjoying a host of legal privileges, from direct subsidies to "tariff, banking, railroad, labor and public lands legislation."

But that's a non sequitur. In the days before general incorporation laws, corporate charters were a special privilege. In the days since, people still argued over whether it was wise to permit limitations on debt liability, or limitations on tort liability, or effective immunity from estate taxes. (Corporations—by their nature as independent, potentially immortal entities—are not strip-mined by the government whenever one of their proprietors dies.) But they did not mistake those benefits for a grant of special privilege, since any business that wants to can incorporate.

That's not true of subsidies, land grants, and the other policies that Grossman and Adams list: They really *are* special privileges, whether enacted as a condition of a corporate charter or put in place some other way. Some industries, such as the banks and railroads, were immediately invested with such benefits; for this, they became the lead villains in the populist demonology of the era. A partnership or cooperative that enjoyed such advantages would have faced the same criticisms.

But that's almost beside the point. The goal of the revocation movement isn't to stop privilege or to end corporate welfare. It's to tighten the state's control of business life. Grossman and the rest don't focus their fire on general incorporation laws. Their favorite target is *Santa Clara County v. Southern Pacific Railroad*, the Supreme Court decision that ruled that corporations are individuals and therefore protected under the 14th Amendment. The precedent allowed scores of state and municipal statutes to be struck down as unconstitutional, from local taxes on railroad property to restrictions on working hours.

Among those who've taken up this cause are the leftist columnists Russell Mokhiber and Robert Weissman, who cited the case earlier this year while complaining that corporations enjoy rights to free speech ("including the tobacco companies' right to market their deadly wares") and to protection from unreasonable search and seizure. In other words, they are not complaining about special privileges. They are complaining about ordinary freedoms. One need not believe that a corporation "is" a person to recognize that it is made up of persons, and that those people should not give up their rights when they associate to form a corporation. If the groups known as "unions," "churches," and "political parties" are protected by the Bill of Rights, then so are the groups known as "corporations." Deny this, and you run into a host of practical problems. (If Mokhiber and Weissman really think corporations shouldn't enjoy the same First Amendment freedoms as the rest of us, what do they think should happen to the corporation that publishes *The New York Times*?)

Language and history shouldn't have to suffer such abuses.

As I said, the revocation movement doesn't seem to be getting anywhere, at least so far as affecting public policy is concerned. It is, however, increasingly popular on the modern left, including not just tobacco-bashers and the like but those lefties who sometimes seem to care about decentralizing power, ending political privilege, and protecting individual liberty. (Grossman and Adams, for instance, are skeptical about regulatory agencies, and at times they even seem interested in states' rights.) It is disheartening to see such people supporting censorship or ignoring due process merely because a corporation is involved. It is even more disheartening to see them chasing such chimeras when the real grants of privilege—the subsidies and entry barriers—are sitting in plain sight.

But what's worse is when someone hoping to ban cigarettes or censor issue ads adopts the rhetoric of men who would treat such causes with contempt. Language and history shouldn't have to suffer such abuses. ◆

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Passing the Buck

Who needs responsibility when there's accountability?

By Sara Rimensnyder

Today's Republican Party has spent a great deal of time, energy, and money attempting to retool its image as hip, modern, and responsive to the needs of a wide demographic. How else to explain the presence of both an American Samoan wrestling champion and the '70s-era diva Chaka Khan, self-sung "everywoman" of soul, at the Republican National Convention last summer? Or ex–Menudo member Ricky Martin shaking his bon-bon at George W. Bush's inauguration bash? Or Utah Sen. Orrin Hatch's surely studied invocation of Alanis Morissette and Ted Nugent during the recent hearings on copyright laws? The GOP seems ready to try anything to be cool, short of adding a Nike swoosh to its official letterhead.

As Sen. Hatch's invocation of Ted Nugent attests, such efforts have for the most part failed spectacularly. Someone might want to tell the Beehive State's senior senator—an amateur musician in his own right—that the Nuge, a.k.a. the Motor City Madman and the author of such crowd pleasers as "Wang Dang Sweet Poontang" and "Yank Me, Crank Me," hasn't had a bona fide solo hit since before the *first* Bush administration.

But Republicans, with Dubya in the lead, have indeed managed a successful makeover of at least one of their party's stoniest aspects: They no longer prattle on like Ward Cleaver lecturing the Beaver about "personal responsibility." Nowadays, they're far more likely to prattle on about *accountability.*

The term figures perhaps most prominently in Bush's scripts for education reform, which he swears will "make sure that the accountability system has got some teeth to it." But he's hardly alone in using the word. When GOP media consultant Mike Murphy talks about how Hollywood films poison society, he moans that "no lefty pop culture titan is ever held accountable." When Rep. James V. Hansen (R-Utah) joins the Democrats in condemning Big Tobacco, he insists that "there should be accountability." And when *Weekly Standard* editor and former Dan Quayle puppetmaster William Kristol ponders the April spy plane fiasco, he stresses that "we need to hold the Chinese accountable."

In politics, nothing is more important than strong convictions—especially the conviction that someone else is the root of all troubles.

A Nexis search reveals that the word's usage has roughly doubled in American newspapers during the past five years, both in direct quotes and in reporters' own vocabularies. So Republicans may be helping to stir a larger cultural wave—or simply riding one that started without them.

Either way, the word is even catching on outside the political realm. Though advertising executives don't always correctly predict shifting public tastes, they can be eerily perceptive. *Accountability* now looms in 8-foot-tall letters on a billboard near my apartment in West Los Angeles, marketing the services of one of California's largest banks. Its appearance must be responding to a trend that has little to do with finance, since one assumes that "accountability" should be the very least a bank has to offer to prospective account holders.

Despite such widespread deployment, the rhetorical swap hasn't attracted much commentary. Yet the move deserves to be lauded for what it is: One of the deftest political maneuvers since William Henry Harrison traded whiskey for votes in the 1840 presidential election. Republicans have discovered that while the stodgy *responsibility* may be an appropriate centerpiece for a personal moral philosophy, it's simply got no place at all in politics. *Accountability,* meanwhile, is a word that every great leader needs in the top shelf of his linguistic toolbox. Why? Because unlike responsibility, it implies that any given problem is entirely someone else's fault.

From a distance, responsibility and accountability may seem like interchangeable terms. But under the glass, they are subtly, significantly distinct. Responsibility connotes a freely made promise to carry out a certain duty. According to *Webster's Ninth,* "RESPONSIBLE implies holding a specific office, duty or trust." Accountability, on the other hand, is the reporting part of responsibility. In essence, through accountability, you force someone to keep their promise with a threat; you ensure that *someone else* fulfills their responsibility. The dictionary puts it this way: "ACCOUNTABLE suggests imminence of retribution for unfulfilled trust or violated obligation."

In political discourse, *accountability* shifts blame. *Responsibility* implies that something is *my* fault—always a tiresome thing, especially for a politician, since it invites voters' recrimination and reproach. Not so with accountability, which inevitably directs voter attention over there, across the room, where those dumb louts are really falling down on the job.

In politics, nothing is more important than strong convictions—especially the conviction that someone else is the root of all troubles. And nothing is more satisfying than holding others accountable. ◆

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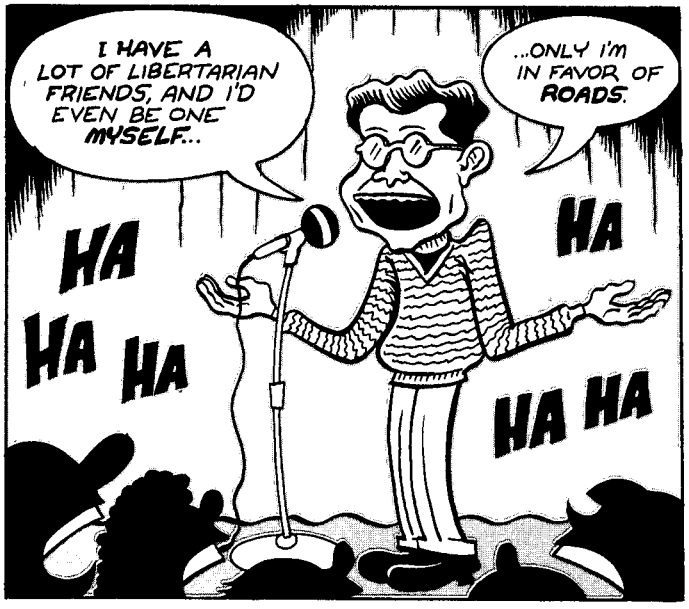
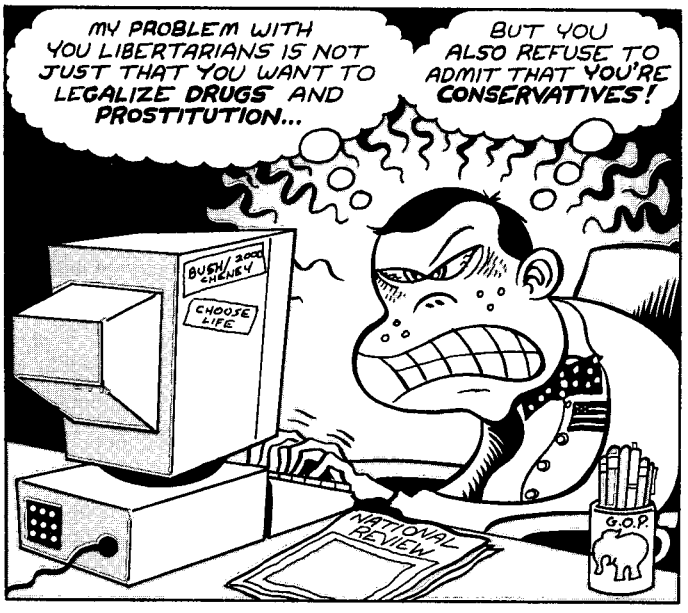
COMMON MISCONCEPTIONS ABOUT THE OTHER "L" WORD
AS OVERHEARD BY PETER BAGGE
©2001
SERIOUSLY, PETER, WHEN WILL YOU GET OVER THIS NAIVE NOTION THAT MOST PEOPLE ARE ABLE TO TAKE CARE OF THEMSELVES?
...HA HA HA...


I HAVE A LOT OF LIBERTARIAN FRIENDS, AND I'D EVEN BE ONE MYSELF...
...ONLY I'M IN FAVOR OF ROADS.
HA HA HA
HA HA HA
HA HA


MY PROBLEM WITH YOU LIBERTARIANS IS NOT JUST THAT YOU WANT TO LEGALIZE DRUGS AND PROSTITUTION...
BUT YOU ALSO REFUSE TO ADMIT THAT YOU'RE CONSERVATIVES!
BUSH/CHENEY 2000
CHOOSE LIFE
NATIONAL REVIEW
G.O.P.

THIS CALLER IS A LIBERTARIAN, EH?
I DON'T WASTE MY TIME TALKING TO PEOPLE WHO OBSESS OVER BLACK HELICOPTERS!
HA-HA! NEXT!
DOWNSIZE THIS!
WHAT?
-CLICK-

I REFUSE TO BELIEVE YOU'RE A LIBERTARIAN...
I MEAN, YOU DON'T EVEN OWN A GUN!
?

-GASP!- YOU'RE A LIBERTARIAN?
YOU MEAN YOU WORK FOR THAT LYNDON LAROUCHE GUY?

Rage Against

ELECTRO PRODUCTION PROHIBITED

the Machines

Witnessing the birth of the neo-Luddite movement

By Ronald Bailey

The global, organized neo-Luddite movement was born this February 24th, on New York City's tony upper East Side, of all places. That's when a group called the International Forum on Globalization held a "Teach-In on Technology and Globalization" at Hunter College. The goal of the event, announced IFG head Jerry Mander, was to "bring together the protest movement born in Seattle with the leading critics of technologies—Luddites, if you will." If the reported attendance by 1,400 people is any indication, then the IFG succeeded in its goal—a fact the world may some day come to rue.

The opening day of the Teach-In was devoted to a non-stop series of plenary sessions held in a cavernous and cheerless auditorium. The sessions started at 9 a.m. on Saturday and ran until 11 p.m.; they were followed by scores of workshops on Sunday. The list of speakers was a veritable Who's Who of anti-technology and anti–free market activists from around the globe. The lineup included such heavy hitters as Kirkpatrick Sale, author of *Rebels Against the Future: The Luddites and Their War on the Industrial Revolution*; Jeremy Rifkin, head of the Foundation on Economic Trends; Stephanie Mills, from the Great Lakes Bioregional Congress; Andrew Kimbrell, head of the International Center for Technological Assessment; and Vandana Shiva, head of Research Foundation for Science, Technology, and Natural Resource Policy.

The attendees were mostly "progressives" who have long been involved with the civil rights, peace, and environmental movements. (One guest confided to me that it has all been downhill since Henry Wallace ran for president.) Though there was a smattering of earnest youngsters hailing from too-cool college campuses located in places such as Vermont, Massachusetts, and Oregon, most of the participants were clearly over 45 years old. But their years have not mellowed the neo-Luddites.

Jerry Mander, a white-haired, humorless man still best known for his 1977 anti-TV diatribe *Four Arguments for the Elimination of Television*, opened the event by explaining why the Teach-In focused on globalization and technology. The IFG and allied groups are concerned about "technology's symbiotic relationship with corporate power," said Mander. Far from dispersing knowledge and empowering traditionally marginalized individuals and groups, argued Mander, the Internet "is facilitating the greatest centralization of unregulated corporate power in history." But we're up against something far bigger than just the Internet. "Now we have biotechnology and its younger sibling nanotechnology, which can potentially redesign nature from the atomic level up," he declared. "With these technologies, nothing will be outside of corporate control."

For Mander and other neo-Luddites, "globalization" refers to what they claim is a self-evident centralization and expansion of "corporate power" (a loose term that seems to cover just about all for-profit economic activity). Stopping globalization requires overlapping and re-

KERRY TALBOTT

If countries worldwide are becoming more similar, it is not because corporations are imposing some uniform set of goods and services, but because human beings share a similar set of needs and wants.

lated strategies, which is why the Teach-In brought together a disparate collection of labor, environmental, indigenous, anti-trade, and civil rights activists. The first step in halting globalization, say the neo-Luddites, is to slow or stop the development and adoption of all new technologies. The primary tool for this is universal implementation of the so-called precautionary principle, which has been acerbically summarized as "regulate first, ask questions later." At rock bottom, the precautionary principle would require that all new technologies be approved by regulators using subjective criteria like whether the technologies are "needed" or are "too socially disruptive" before they could be offered to the public.

The second step in slowing globalization is to block the increase of free—or, at any rate, *freer*—trade. The neo-Luddites believe that trade does more than simply spread technology throughout the world; trade also empowers corporations while destroying the livelihoods of workers in both developed and developing countries. They are, of course, right that trade facilitates the spread of technology and the mixing of cultures; they are wrong, however, to assert that "the corporations" are the primary beneficiaries of such exchange, or that such exchange, on balance, immiserates workers and destroys the environment.

In place of a globally integrated, "corporatized" economy based on high technology, the neo-Luddites offer a vision of mandatory, small-scale, economically self-sufficient autarkies inspired by traditional and indigenous cultures. They draw their name and their animating spirit from the original Luddites, the infamous "machine breakers" in early 19th century England who protested the nascent Industrial Revolution by stealing into factories and smashing equipment. Like their forerunners, the neo-Luddites also want to break machines (sometimes literally)—especially those that further biotechnology, nanotechnology, and computing.

In some ways, it is easy—and tempting—to write off the neo-Luddites as sad-sack '60s refugees, aging hippies who pine away for a romantic, preindustrial idyll that never existed in the first place or, to the extent it did, was actually characterized by large-scale human deprivation. But in the wake of demonstrations in Seattle over the World Trade Organization and, more recently, in Quebec over the Free Trade Agreement of the Americas, it is clear the neo-Luddite mentality is not only widespread, but a powerful motivating force in attacks on free trade and technological innovation.

Those of us who believe that markets and technology offer the best hope for reducing human poverty and misery—and for increasing human opportunity and flourishing—would do well to examine the basic premises of the neo-Luddite movement and engage its underlying fallacies. Because it drew together so many of the intellectual architects of the neo-Luddite movement, the IFG Teach-In provides a perfect occasion for such an exercise.

Technophobia Deluxe

Many of the speakers at the Teach-In repeated the mantra that "technology is not neutral" as though it were an incredibly deep and original insight. The slogan is hardly that, but its constant repetition offers insight into neo-Luddite thought processes and values.

"Technologies have consequences," explained neo-Luddite Kirkpatrick Sale. In a long interview with the Web site primitivism .com—ah, the irony of a Web site that promotes primitivism!—Sale elaborated on the notion: "Once we understand that technologies are not either accidental or neutral we will understand that they inevitably express the values and beliefs of the powers in society that introduce and adopt them; a progressive nation-state capitalism will produce one kind of technology, a decentralized tribal anarchocommunalism an entirely different kind."

Sale and the other neo-Luddites are without question correct that technology is not neutral. Then again, it's not exactly clear who said that it was. The relevant question is not whether technology is neutral, but by what process is it adopted and whose interests does it serve?

Technology creates new possibilities. Inventing ways to make fire and clothing allowed human beings to leave the African savannas and inhabit new areas with harsher climates. Bows and arrows permitted our ancestors to become more efficient hunters. Learning how to plant and harvest grass seeds dramatically transformed the human prospect, as did taming goats, sheep, horses, cows, and pigs. Writing utterly changed the world. Smelting metals, building boats, carts with wheels, wine-making, stonemasonry—the

list of transformative technological breakthroughs is endless even if one only considers advances that happened before the birth of Christ.

The neo-Luddites point out that human beings change what they do and how they do things in response to new technologies. Again, that isn't a blazing insight—the point of technologies is precisely to change the way people do things, especially in ways that tend to benefit more people. Though—or perhaps because—the adoption process is decentralized and constantly under revision, technologies that benefit large numbers of people are the ones that generally succeed over the long haul, e.g., canning, cars, television, weaving, pottery, electricity, computers.

Car Talk

The neo-Luddites' general attitude toward technology is evident in their treatment of cars. Unsurprisingly, automobiles come in for a lot of opprobrium. In many ways, they remain the ultimate example for neo-Luddites of everything that is wrong with the modern world. As Jerry Mander put it in the 1991 neo-Luddite anthology *Questioning Technology: Tool, Toy or Tyrant?*, "If you accept the existence of automobiles, you also accept the existence of roads laid upon the landscape, oil to run the cars, and huge institutions to find the oil, pump it and distribute it. In addition, you accept a sped-up style of life and the movement of humans through the terrain at speeds that make it impossible to pay attention to whatever is growing there." Kirkpatrick Sale, in the primitivism .com interview, lays out the raw bone of contention regarding not just autos, but all technologies: "Only someone ignorant of industrialism and the Enlightenment mind-set would have thought the automobile 'emancipating.' It was intended to increase consumerism, individualism, anomie, community disintegration, and the power of markets, and it did."

Leaving aside the important issue of whether consumerism might itself be emancipating, it's more than a tad unconvincing to argue that Henry Ford plotted to increase "consumerism, individualism, anomie, community disintegration and the power of markets." To be sure, Ford wanted to make a buck by providing people with cheap, convenient private transportation, and he succeeded beyond his wildest dreams. In 1900, there were a few thousand automobiles in use worldwide, and they were toys for the very rich. By 1950, there were 70 million vehicles worldwide and by 2000, the number had risen to over 500 million. Of course, there are downsides to automobiles, but as their burgeoning numbers show, people the world over clearly regard cars as emancipating, or at least worth owning. This is no small point, as it goes directly to the heart of the neo-Luddite enterprise: Does technology use humans or do humans use technology? Cars may not be the hypothetically perfect form of transportation, but they clearly enhance the quality of life of people who own them.

Certainly, most people prefer them to other available forms of transportation, which have their own downsides as well. Set aside for the moment questions of relative reliability and usefulness and just focus on environmental costs: Before the automobile became widespread, tens of millions of acres of land were dedicated as pasture for horses and mules. While cars do cause pollution, compare that to city streets clotted with horse manure and urine, which were breeding grounds for disease. Railroads, the 19th century's "modern" form of transportation, consumed nearly 25 percent of all the wood used in America, for both track ties and fuel.

Neo-Luddites are right that any given technology implies many others, but they always seem to undersell the implications of the simpler, "purer" forms of technology they themselves prefer. They also insist, in the absence of convincing data, that technologies are foisted on unwilling users.

Colonial Technologies

If autos set the gold standard for neo-Luddite contempt, then computers and the Internet are not far behind. "Films, radio, computers, TV, [and] the Internet are imprinting a unified pattern of thought and a single pattern on our way of life," declared Mander, brushing aside any thought that recent technological innovations have allowed millions of new voices to be heard on the Internet and elsewhere. "We are in the terrifying situation in which a few billionaires colonize the minds of millions of people, teach people to hate where they live, worship McDonald's, and trust corporations."

"Computers are a colonizing technology," pronounced Chet Bowers, an adjunct profes-

sor in the Environmental Studies Department at the University of Oregon. "Computers profoundly alter how we think and inevitably reduce our ability to understand nature and cultures other than our own." (The obligation other cultures might have to try to understand our culture went unexplored.)

And over at primitivism.com, Sale put it this way: "The computer, particularly the PC, will bring unmitigated disaster, simply because it enables the powers of this society to do faster and more efficiently the kinds of things it likes to do, with resulting social disintegration, economic polarization, and environmental devastation."

Colonizing? This claim can be made about any communicative activity, but for neo-Luddites, it's an all-purpose pejorative deployed to describe an activity that one dislikes. Langdon Winner, a professor at Rensselaer Polytechnic Institute, summed it up thus: "Everything and everyone is colonized." That amounts to little more than the observation that everyone learns involuntarily from the social and cultural environment in which he finds himself.

"The point is the way new technologies are introduced to us without a full discussion of how they are going to affect the planet, social relationships, political relationships, human health, nature, our conceptions of nature, and our conceptions of ourselves," says Mander. The neo-Luddites have a tool which they believe will force this "full discussion": the precautionary principle. According to Stephanie Mills, the precautionary principle embodies the "sensible idea that new chemicals and new technologies should be presumed guilty until proven innocent."

But it's clear that neo-Luddites invoke the precautionary principle not to evaluate new technologies, but to stack the deck against them. Martin Teitel, a philosopher who directs the anti-biotech activist group the Council for Responsible Genetics, was quite explicit about what the precautionary principle could do to stop technological progress. When asked how any scientist could prove that a biotech crop was completely safe without the field trials that the precautionary principle would simultaneously require and ban, Teitel replied that that's just fine. "Politically," he explained, "it's difficult for me to go around saying that I want to shut this science down, so it's safer for me to say something like 'it needs to be done safely before releasing it.'" Requiring biotechnologists to prove a negative under the guise of implementing the precautionary principle means that "they don't get to do it period," Teitel noted.

If they feel that the world is going to hell in a high-tech hand basket, the neo-Luddites can at least console themselves with this: The precautionary principle has already been incorporated into a number of international treaties, including the new Biosafety Protocol and the Persistent Organic Pollutants Treaty, which the Bush administration recently agreed to sign.

Corporate Punishment

According to neo-Luddite analysis, the force behind technological innovation—and the only beneficiary of that innovation—are "the corporations," a vast and vague abstraction covering virtually all for-profit activity. Neo-Luddites have two basic bones to pick with corporations. First, they object that companies offer ever more goods or services to customers who are simultaneously enticed and forced into buying extravagant, destructive junk—a car, say, or a computer, or movie tickets, or whatever. For neo-Luddites, this is a revolting state of affairs and not only because the purchases themselves are inevitably misguided: Exchange also inevitably encompasses wider and wider networks—the local economic scene becomes enmeshed in the global one.

This, in turn, is terrible because global markets create a despised "monoculture" in which "all countries are meant to develop in the same way, with the same hamburgers, the same shoes, the same cars, and the same urban landscapes," as Mander put it at the Teach-In. He summed his comments up by saying that we're "cloning cultures to be like ours."

As a particularly pernicious example of technological intrusion into happy traditional life, Helena Norberg-Hodge, head of the International Society for Ecology and Culture, complained that Tibetan and Mongolian children are spurning traditional clothing and now crave Levi's and running shoes. She is also displeased by the fact that after the introduction of the transistor radio in traditional Ladakhi society in India, people no longer sat around the fires and fields singing communal songs because they could now listen to professionally produced music from the cities.

Vandana Shiva, director of the Research Foundation for Science, Technology, and Natural Resource Policy in New Delhi, warned the Teach-In participants that the technologies wielded by corporations threaten "liberation from our cultures, our communities, our rootedness." Which of course explains precisely why many people, especially in parts of the world that offer relatively few opportunities, embrace new technology—the stuff is one way of possibly increasing their quality of life.

As much as the neo-Luddites might wish it otherwise, there simply is no other social and economic model of lifting hundreds of millions of people out of poverty than what might be called democratic, technological capitalism. If one wants effective sanitation, improved medicine, a steady food supply, convenient transport, and cheap and easy communications, there is no alternative to technologically robust, market-based societies. To the arguable extent that countries worldwide are becoming more similar, it is not because corporations are imposing some uniform set of goods and services, but because human beings share a similar set of needs and wants.

Cultural diversity and cultural identity are routinely invoked by neo-Luddites, who insist that we must respect different cultures. That's a view that proceeds directly from a belief in a universal set of human rights, including a right to self-determination. Yet, neo-Luddites deploy their ideas about diversity and identity in such a way that undermines respect for those rights, at least as they apply to individuals. People, they suggest, should not be able to "disrupt" their cultures through the adoption of new technologies that challenge the status quo.

As the Peruvian novelist Mario Vargas Llosa has written, the neo-Luddite insistence on maintaining or even exacerbating "authentic" cultural differences inevitably endangers liberty. "The notion of 'cultural identity' is dangerous," writes Vargas Llosa in the January/February 2001 issue of *Foreign Policy*. "From a social point of view, it represents merely a doubtful, artificial concept, but from a political point of view it threatens humanity's most precious achievement: freedom." Why? "The concept of identity, when not employed on an exclusively individual scale, is inherently reductionist and dehumanizing, a collectivist and ideological abstraction of all that is original and creative in the human being, of all that has not been imposed by inheritance, geography, or social pressure," concludes Vargas Llosa.

Indeed, it is no coincidence that democracies tend to be technologically advanced, just as it is no accident that the end of slavery, universal suffrage, universal education, and women's liberation all arose in highly technological societies. There have been precious few low-tech democracies since ancient Greece (and even Athens was a slaveholding society).

Despite neo-Luddite fears, the rise to near-ubiquity of tech-heavy democracies has been a boon to the people of the world. It is unquestionable that in political and material terms, life is a lot better for a lot more people than it was just a century ago. Universal suffrage, nonexistent at the beginning of the 20th century, is now the norm in 120 of the world's 192 countries. Democracy, in other words, is now the norm for human societies for the first time in history. While the connections are complicated, technological progress and the wealth it creates help make political advances possible.

The same forces have also been driving up global life expectancies, that most basic indicator of well-being. Average global life expectancy in 1900 was just 30 years, today it has more than doubled to 66 years. Infant mortality rates are at historic lows in the developed world and continue to decline even in poor countries such as Bangladesh and Kenya. While average annual per capita income in those countries remains dreadfully low by U.S. standards—in Bangladesh it's $370 and in Kenya only $360, compared to $31,190 in the U.S.—the trajectory of technology has indeed not been neutral. It has been an enormous gain for most of humanity.

The Teach-In progressives do make a salient point about one aspect of "corporate power"—corporations are skillful players in whatever political system they find themselves. They typically evince little shame in supporting politicians who favor their interests. This fact annoys other interest groups in a democracy—labor, say, or environmentalists, or even neo-Luddites—because they would prefer not to have to compete for political favors. The problem is that all interest groups, whether farmers, corporations, or unions, seek to use a government's power (and taxes) to further their goals at the expense of other people's goals.

The easiest way to diminish corporate power is to reduce government power, which is something definitely not on the neo-Luddites' agenda. Their plans are predicated upon governments with far more sweeping powers than current ones possess.

The neo-Luddite commitment to a radical cultural relativism that privileges primitive and indigenous cultures puts them in an awkward position because many such cultures practice customs which even the most sympathetic neo-Luddite must find odious.

Of course, when corporations try to use the political process to obtain subsidies, or enact protectionist measures that harm consumers, they should be relentlessly opposed. But in the long run, if one wants to diminish corporate power, the easiest way to do it is to reduce government power, which is something definitely not on the neo-Luddites' agenda. Indeed, their plans are predicated upon governments with far more sweeping powers than current ones possess.

Primal Scenes

As an alternative to what they see as a disastrous technological market culture, neo-Luddites turn to traditional and indigenous cultures as models for emulation. Jerry Mander asserted in a 1991 interview in *The Sun*, "Life really is better when you get off the technological-industrial wheel and conceive of some other way. It makes people happier." He more extensively propounded this idea in his 1992 book *In the Absence of the Sacred: The Failure of Technology and the Survival of the Indian Nations.*

In 1995, Mander told an interviewer, "A little investigation of traditional native economies shows that people were able to survive in most parts of the world, certainly in the temperate zones, but even in the extreme zones, with very little work, maximum pleasure and fun, and minimum technology. ...They hung out. They flirted. They played a lot of music. They slept. They seemed to have a good time. They related. There was a lot of community life."

"As a species, human beings have more experience living wild, in hunter-gatherer bands, embedded in healthy ecosystems," agreed Stephanie Mills, an environmental activist and editor of *Turning Away from Technology: A New Vision for the 21st Century.*

Modern anthropologists have long been split down ideological lines between the Rousseauan and Hobbesian interpretation of primitive/indigenous lives. If one chooses to focus on how indigenous people spent their time, some traditional societies did not have to use a lot of effort to find and prepare food and shelter when times were good. However, they were not very resilient when things went wrong. When droughts occurred or the meat herds moved on or a neighboring group attacked, starvation and disease and rape and death were immediate prospects. Even during "good times" if one looks at the level of material existence, many traditional peoples lived in unimaginable squalor and filth, and were assaulted by disease, insects, and violence. They were embedded in rigid kin hierarchies and subject to enormous rates of infant mortality and death in childbirth. Their intellectual lives were restricted to their immediate landscapes, families, and neighbors. Archeologists believe that life expectancy at birth for primitive hunter-gatherers was 26 years. For early agricultural communities, it was even worse, just 19 years.

The neo-Luddite version of the cheerful primitive has more than a few echoes of earlier Romantic myths of the Noble Savage and the Happy Peasant. Hence, Mander claims, "Native societies sustained themselves successfully for thousands of years because they had developed a philosophical system rooted in their relationship to nature."

In fact, they just barely "sustained" themselves at all—most people lived on the thin edge of poverty and one bad drought or bout of disease could wipe them and their families out. For most of our species' existence, human beings realistically regarded nature as the source of great dangers and an uncertain livelihood.

As for the curious notion that primitive people were "embedded in healthy ecosystems," what do the neo-Luddites think happened to the big animals of Australia, North and South America, and New Zealand? The mammoths, mastodons, ground sloths, giant armadillos, giant kangaroos, giant lizards, and giant moas all went extinct when primitive people showed up and started hunting them. It would be silly to hold our early ancestors responsible for the disappearance of hundreds of species just after the end of the last Ice Age—after all, they were hungry. But surely it's just as ridiculous to impose modern deep-ecology values on them and celebrate their supposed sensitivity to nature, much less laud them for "a philosophical system rooted in their relationship to nature."

The neo-Luddite commitment to a radical cultural relativism that privileges primitive, native, traditional, and indigenous cultures puts them in an awkward position because many such cultures practice—or continue to practice—customs which even the most sympathetic neo-Luddite must find odious.

Consider just the three great pre-Columbian civilizations. For the Aztecs, war was a way of life; they also annually ripped the

hearts out of more than 50,000 victims in sacrifices to their bloody gods. Mayan city-states were governed by aristocratic warlords and priests who not only mutilated themselves in public ceremonies but who so devastated their natural environments that their whole civilization collapsed. The Incas assimilated conquered peoples into their culture and language by forcing them to resettle far from their native lands; in addition, their emperors awarded themselves 750 wives.

Today there are plenty of traditional practices that shock the conscience, such as female circumcision in Africa or India's caste system that, according to Human Rights Watch, still oppresses some 160 million untouchables, one sixth of the country's population. It's hardly the case, as the neo-Luddites tend to assume, that indigenous cultures embody some form of pure morality lacking in more developed societies.

Local Yokels

A number of speakers at the Teach-In advocated intense "localism" as the best alternative to a cosmopolitan world. John Cavanagh of the leftist Institute for Policy Studies told participants that they should champion "small-scale activities, local markets, local communities, [and] livelihoods connected to local economic production," and fight for "rules that favor the local." Another speaker claimed that "localization and community building" would result in "an almost instantaneous cultural shift toward a richer and more joyous life."

The most extreme version of localism championed by neo-Luddites is a form of ecological feudalism called "bioregionalism." "Bioregionalism is the most sensible, natural framework for how to organize resources, economy and society. In my view that's very workable," Jerry Mander said in a 1997 interview with the Webzine *Cascadia Planet.*

Teach-In speaker Kirkpatrick Sale is the godfather of bioregionalism. Sale defined a bioregion in a 1993 pamphlet based on a 1983 speech titled *Mother of All: An Introduction to Bioregionalism.* For him a bioregion is a "part of the earth's surface whose rough boundaries are determined by natural rather than human dictates, distinguishable from other areas by attributes of flora, fauna, water, climate, soils and land forms, and the human settlements and cultures those attributes have given rise to."

The crucial feature of bioregional localism is that each bioregion must be completely self-sufficient, with no inter-regional trade allowed. "Just as nature does not depend on trade, does not create elaborate networks of continental dependency, so the bioregion would find all its needed resources—for energy, food, shelter, clothing, craft, manufacture, luxury—within its own environment."

Sale adds that a bioregional economy "would adapt its systems to the given bioregional resources: energy based on wind, for example, where nature called for that, or on wood, where that was appropriate, and food based on what the region itself—particularly in its native, pre-agricultural state—could grow." Again, no trade, not even in food.

The Pacific Northwest is a hotbed of bioregional thinking. Bioregionalists refer to Oregon, Washington, and British Columbia as "Cascadia." What would happen if Cascadians were forced to subsist only on food native to the region? Wheat is not native to that bioregion, nor are apples, nor are potatoes (wheat comes from Mesopotamia, apples from central Asia, and potatoes from the Andes). Surely all those Microsoft and Boeing wage-slaves could not live off of the native salmon, whales, and roots and berries that supported the Northwest Pacific Coastal Indians before the coming of Europeans.

Neo-Luddites claim to celebrate cultural diversity. Sale explained what this means in a bioregional context. Rejecting Enlightenment dogmas such as political equality and democratic government, Sale writes in *Mother of All,* "Bioregional diversity means exactly that. It does not mean that every region of the Northeast or of North America or of the globe will build upon the values of democracy, equality, liberty, freedom, justice, and other suchlike 'desiderata.'...It means rather that truly autonomous bioregions will likely go their own separate ways and end up with quite disparate political systems—some democracies, no doubt, some direct, some representative, some federative, but undoubtedly all kinds of aristocracies, oligarchies, theocracies, principalities, margravates, duchies, and palatinates as well." In other words: Forward into the Past! And notice the one type of cultural diversity that is apparently not tolerated is a liberal commercial republic.

The appeal of bioregionalism helps explain why trade and free markets are anath-

ema to neo-Luddites: Trade, after all, brings far-flung goods and people together, across "natural" boundaries. In his Teach-In comments, Sale referred to the annual World Economic Forum meeting in Davos, Switzerland, as setting up the "next round of world rape." Protectionism is a priority item on the neo-Luddite agenda. Tom Clarke, the chair of the IFG Committee on Corporations, insists on the "right of any country to regulate inflow and outflow of goods and services." Vandana Shiva asserts, "A healthy society decides what it will export and import, just like healthy plants decide what they will take up and what they will release."

Neo-Luddites believe that if trade can be halted, then low-tech jobs in the developing world will not be threatened and there will be less ecological damage. They're wrong on both counts.

In terms of jobs, they embrace wholeheartedly what's known as the candlemaker fallacy: One must oppose electric lighting because it will put candlemakers out of business. The neo-Luddites point to chronic "underemployment" in the developing world. It's true that many people there are "underemployed" in the sense that they do not have access to the machinery, the infrastructure, or even basic sanitation that would allow them to build better lives for themselves and their families. The causes for this sorry state of affairs are many, and corrupt authoritarian governments pursuing bad social and economic policies are at the top of the list. But it is certainly not the result of globalization or modernization of traditional methods of production.

To neo-Luddites, inefficiency creates more jobs—just think how many more jobs there would be if bricks were still made by hand, clothes sewn by hand, coal mined by hand, and on and on. Neo-Luddites also believe that one has an unconditional right to continue one's "livelihood" regardless of changed economic circumstances. Vandana Shiva is an especially strong proponent of protecting livelihoods from competition, arguing that if you were once a farmer, you have a right to remain one for your entire life. Similarly, if one's family has produced cooking oil through small press mills for generations, then no one (especially not a corporation) should be allowed to sell cheaper, competing cooking oils.

There's no question that technological progress and the expansion of markets do oblige people to change jobs and professions on a regular basis. But the result is hardly bleak: In the developed world, overall employment continues to go up, as do average wage rates and standards of living.

When it comes to sparing the natural world from human disturbance, trade and technology are in fact the environment's best friends. In high-tech countries, forests are expanding, air and water pollution are abating, less land is being used for agriculture, and fertility rates are falling. It is in low-tech countries where poor people continue to cut down their forests for farmland, can't afford pollution control measures, and have high fertility rates. Why? Poor people have more important things to worry about than environmental amenities. (Getting enough to eat is at the top of the list.)

The neo-Luddites are similarly mistaken when they implicate modern notions of private property in the destruction of the natural environment. What neo-Luddites fail to understand is that much of the ecological destruction they see occurs in open-access commons. Fisheries, tropical forests, airsheds, rivers, and lakes effectively belong to no one and are open to anyone. This means that everyone has incentive to take as much as possible of the common resource before others beat him to it. Yet neo-Luddites want to expand the commons.

"Air, genes, bulk water belong to the earth and no one has a right to profit from them," said the Institute for Policy Studies' John Cavanagh. Vandana Shiva expresses a similar notion when she argues that property rights cause the "conversion from the abundance of life to the scarcity of the marketplace." This line of thinking descends from Jean-Jacques Rousseau, who wrote in his *Discourse on the Origins of Inequality* that, "You are lost if you forget that the fruits of the earth belong to all and the earth to no one!"

Yet if the global commons is expanded as the neo-Luddites hope, much more of the earth will look like the blasted, barren landscape of the Sahel. The Sahel is the once-productive savanna region south of the Sahara that has been devastated by overgrazing herds of the indigenous peoples who hold its pasturages in common. As troubling, trying to manage a commons via political means requires centralized authority administering increasingly detailed regulations, with a cadre of bureaucrats to monitor and enforce them. True decentralization is possible only by

abolishing the commons, enclosing it, and assigning property rights to people. This harnesses the incentives of private property, which encourages people to protect and preserve their property. This has been done in the case of fisheries in New Zealand and Iceland. And private temperate forests are expanding in developed countries. Even the half-hearted sulfur dioxide emissions market in the United States has achieved remarkable reductions in air pollution. Between 1995 and 1999, for instance, emissions have fallen some 22 percent below federally set targets—and at a cost more than 40 percent below the initial projections.

Inaction Plan

From what wellspring does the neo-Luddite hatred of modern technology flow? Though thoroughly secularized, neo-Luddites evince a yearning for a world filled with self-evident revelation. They imagine such a world existed in traditional cultures before they came in contact with the West. They hanker after a contemporary version of the medieval Great Chain of Being, in which everyone—from the king to the meanest peasant—had his or her place and did not doubt the rightness of the cosmic order.

Neo-Luddites believe that traditional, primitive cultures were more egalitarian. They're generally right about that, but history shows that the truly egalitarian cultures are desperately impoverished ones. The neo-Luddites would evidently exchange what they regard as the tyranny of corporations and technology for the more amenable tyrannies of small-town life and of kinship obligations that low-tech living necessarily imposes.

To achieve those ends, the neo-Luddite movement is pursuing particular political action. First, they are organizing to stall any and all international negotiations over free trade agreements. "We must lobby for a moratorium or freeze on any new trade agreements or trade deregulation," declared Helena Norberg-Hodge of the International Society for Ecology and Culture.

Second, they are organizing to stop new technologies in their tracks, especially biotechnology and nanotechnology. Many speakers at the Teach-In wholeheartedly endorsed Sun Microsystem's chief scientist Bill Joy's call for humanity to relinquish biotech, nanotech, and robotics as simply too dangerous to use. Rich Hayes, coordinator of the Exploratory Initiative on the New Human Genetic Technologies, demanded "an immediate global ban on human reproductive cloning, an immediate global ban on manipulating genes that we pass on to our children, and accountable and effective regulation of all other human genetic technologies."

Longtime anti-biotech fanatic Jeremy Rifkin called for "a strict global moratorium, no release of GMOs [genetically modified organisms] into the environment." Rifkin argued that "the gene pool is a shared commons which should be administered as a trust for all humanity." He would "prohibit any patents on genes, tissues, cells, organs, organisms," and advocates a global tax on human gene therapies and biotech drugs, the proceeds of which would be distributed to the developing world.

The neo-Luddites would like countries to adopt domestic bans on biotechnology and other suspect technologies. And they want countries to incorporate similar bans into international treaties. Already, in 1997, the General Conference of UNESCO adopted, unanimously and by acclamation, the Universal Declaration on the Human Genome and Human Rights which prohibits human reproductive cloning. Global taxes would be distributed by appropriate United Nations agencies. And as noted earlier, the neo-Luddites have already been successful in getting the precautionary principle incorporated in both the United Nations Biosafety Protocol and its new Persistent Organics Pollution Treaty.

"This is the big wrestling match of the 21st century," declared Rifkin. For once, the man who predicted in 1979 that the world was entering a "new age of scarcity" in which we would run out of resources such as oil and timber, and who in 1995 predicted that technological innovation would soon cause massive unemployment, is indisputably correct. The hopeful future of humanity freed from disease, disability, hunger, ignorance, poverty, and inequity depends on beating back the forces of neo-Luddite reaction that were assembled so successfully at the International Forum on Globalization's Teach-In. The struggle for that future begins now.

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When it comes to sparing the natural world, trade and technology are the environment's best friends. In high-tech countries, forests are expanding, air and water pollution are abating, and less land is being used for agriculture.

Enemies

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# of Trade

The FTAA protesters in Quebec were misguided. So was the police-state response to them.

By Evan McElravy

At one end of the park, the crowd let out a loud huzzah at the urging of a passionate speaker, then streamed out of the park and into the downtown streets. "FTAA: Fuck You, Go Away!" A motorcycle cop roared by at top speed.

I cringed, wondering again just what I was doing at Ground Zero of the world anti-globalization movement, feeling distinctly like a pilgrim in an unholy land. Blocks away, 34 heads of state—along with their families, their factotums, their foreign ministers, and several thousand journalists—representing every nation in the Americas save Cuba were gathered in the historic heart of Quebec City for the third Summit of the Americas. The stated goal of the April meeting was to create a Free Trade Area of the Americas, better known simply as the FTAA. In the streets surrounding the historic district were some 30,000 protesters from Canada, the United States, and even further away, expressing their collective indignation at the prospect of a hemispheric trading bloc. And between those two groups was what has become the symbol of the weekend, a 2.3-mile concrete and chain-link security perimeter, inside which only the neighborhood's residents and workers, summit attendees, and registered journalists were permitted to pass.

I had come to town on a chartered school bus, in the company of some leftist friends (members of a group called the International Socialists) who've learned to ignore my libertarian affection for unplanned, unpredictable trade across national borders. As we crossed the St. Lawrence River into the suburb of Sainte-Foy, the bridge had been lined with police cars about every 100 feet. Our affinity group leader admonished us to write the number for the counter-summit's free legal aid association on our arms in permanent marker.

The nerve center for the protests was Laval University, located about two miles west of the city center. (The university had opened its buildings to the protesters, transforming its lecture halls and

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It's hard to know which is more discouraging: the presence of so many people so woefully informed about trade or the overblown police-state response to them.

gymnasium into tightly packed barracks.) I met up with a large group marching from Laval to downtown, an eclectic assortment of new arrivals, jubilant and expectant, whooping, clapping, beating drums, and chanting "The people united will never be defeated!" in three languages. The air smelled strongly of marijuana—a scent vastly preferable to that of the tear gas that would permeate the rest of the day. The protest signs ranged from "Continuous Growth Is the Philosophy of the Cancer Cell" to the more distinctly hostile "Eat the rich!" (I found that one a bit unsettling, if only because the left's leader in Parliament, Alexa McDonough, has defined "the rich" as those making more than C$60,000 a year—around $40,000 in U.S. money.) Several placards deployed the stern visage of Ché Guevara to condemn the U.S.'s multi-billion-dollar drug eradication folly, Plan Colombia. (See "The Drug War's Southern Front," April 2000.) I found myself agreeing with the crowd on that issue, if not on their choice of spokesman. Likewise, I rather fancied the International Socialists' signs urging Canadians to "Jail the Liberals, Free the Refugees, Stop Attacks on Immigration!"

As we marched down boulevard René-Lévesque toward downtown, residents of the neighborhood we were invading came out to watch as we passed. A few faces showed stony hostility, some passive interest, others flagrant support. They reminded me of spectators at a Fourth of July parade. A police helicopter roared overhead and the people booed. "Say no to the racist police!" "Fuck neo-colonialism!" A mocking rendition of "O Canada" broke out amid jeers.

The crowd came to a stop at rue de Bougainville: A small contingent of riot police was up ahead. The crowd instantly tensed. The black-clad, truncheon-wielding "Eat the Rich" crowd put on their masks and bandanas. Everyone else began to quietly worry. A protest leader with a megaphone delivered the status report: "The block is clear. The police are still there." He recommended that the march turn right on rue de Bougainville and continue to the Plains of Abraham, then meet up there for solidarity with the labor groups. We could continue up ahead, but there was a risk of riot cops and tear gas. The hard cases in black charged forward with evident relish; most of the remainder stayed at the intersection for a few moments, visibly unhappy about the march being split. Ultimately, almost everyone moved on to the Plains of Abraham and I found myself reasonably content to follow them.

The overwhelming majority of the protesters during the conference were peaceful; at most, only 500 were violent, many of them members of the anarchist Black Bloc. Out of a total of nearly 30,000 protesters, that is indeed a tiny percentage. Yet in absolute numbers, 500 young, fit troublemakers is more than enough to wreak considerable havoc. And that figure doesn't count the many nonviolent protesters who, not wanting to be injured or arrested, might have thrown a tear gas canister back over a wall or shoved a riot cop away.

The labor groups may have been the de facto big cheeses at the protest, but their main show was studiously ignored by both the media and the police. That afternoon, 20,000-plus union members and their supporters marched north of downtown in the protest-friendly "green zone," unmolested by a single riot cop, with only a paltry number of reporters and photographers in tow. Not that I'm blaming the press. The far more interesting events were happening downtown, where several thousand remaining protesters were gathered in the general vicinity of the notorious barricade, the "red zone." On the other side of the barricade were hordes of federal, provincial, and local riot policemen armed with tear gas and rubber bullet rifles, plus Canadian army troops with dogs.

From a convenience store near the battlefield, I phoned one of my socialist friends and arranged to meet him on avenue de Sallaberry, near the purported fall-back zone. (This turned out to be probably the most heavily policed spot in the city, aside from the barricade itself.) The main group of demonstrators was moving north in a colorful parade. I met up with the International Socialists, who were preparing to head up René-Lévesque toward the barricade. My friend was wearing an Israeli gas mask. I was kindly loaned a bandana soaked in lemon juice—a helpful formula for reducing the respiratory effects of tear gas, though it doesn't do much for your eyes.

By wearing it, I committed a misdemeanor: The cities of Quebec and Sainte-Foy had banned bandanas, handkerchiefs, gas masks, or anything else that would interfere with effective gassing. As I donned my makeshift mask, a stranger bearing leaflets asked me, with

deadly earnestness, "Sir, are you a Bolshevik?" The situation at once seemed both outlandishly ridiculous and deadly serious. I was now in harm's way.

Marching toward the barricade, I was struck by the eerie silence of it all. At the same time, my eyes began to water slightly from the distant clouds of tear gas. There was a bitter taste on my tongue, and I felt an urge to cough. Off in the distance, riot cops were advancing toward us, and a large cloud of gas began to blow in our direction. Another tear gas canister exploded a short distance away, and someone shouted, "Fuck George W. Bush!" The crowd was turned around, at least a quarter-mile from the barricade, and we began to retreat back up René-Lévesque. There must have been two or three thousand of us retreating from a hundred or so riot cops. Several more canisters went off. Helicopters hovered overhead. Looking up, I noticed several sharpshooters perched on the taller buildings. As we passed avenue Turnbull, we caught sight of another line of riot police flanking us from down that street. The crowd began to panic. Cooler heads shouted, "Don't run, don't run," and the retreat remained orderly, if painful.

At that point, I decided I'd had enough, and a group of us headed a few blocks north to a small park, where we sat and rehydrated, discussing what had happened. Several of my friends had been down at the barricade itself; they were soaked from head to toe and flushed from the effects of the gas. They had been participating in a peaceful sit-in at the barricade when the police fired tear gas at them and chased them off with a water cannon. The cops had also been firing rubber bullets indiscriminately: They're supposed to be directed at legs, but several people had been hit in the throat. Off in the distance, I heard a concussion grenade explode.

I began to ponder which was more discouraging to me: the presence of so many people so woefully informed about trade or the police-state response to them. At one point, we counted 30 tear-gas canisters fired in under a minute. The provincial Sûreté alone fired 1,700 canisters over the weekend, and the Mounties and the Quebec City cops probably each fired as many again themselves. The Sûreté du Quebec also fired some 320 rubber bullets; the total for all police was probably around 1,000. And then there was the wall itself, a presence so medieval in its implications that some protesters even constructed a large wooden catapult to fire teddy bears into the police. Meanwhile, the authorities outlawed handkerchiefs, attacked people sitting *outside* its security perimeter, and gassed nearly the entire downtown.

I was not the only free-trader in Quebec to be alarmed at the police response. Former Industry Minister Sinclair Stevens—a veteran of the Mulroney administration, which had negotiated the original Free Trade Agreement with the United States—wrote an excellent editorial in the Toronto *Globe and Mail* that summed it up as a "police state in the making." Yes, the delegates' security must be guaranteed, and the violent elements must be controlled. But at what cost? And when police attack peaceful protesters, who is to blame when more violence results?

Try as I might, I can't condemn the protesters (except, of course, for the deliberately violent fringe with their baseball bats and Molotov cocktails). Some of them are my friends, and nearly all honestly hope for a world where everyone is rich, secure, and able to pursue their dreams freely. If these desires manifest themselves in a simplistic anti-capitalist message, then we on the free trade side of the debate can only blame ourselves. Too often we assume that nothing can stand in the way of free trade, that globalization is inevitable, and that engaging the other side in a constructive debate is unnecessary or irrelevant.

The case for free trade has been made primarily by cretinous conservative politicians and pundits, who seldom resist ridiculing earnest youngsters looking for a better world. Some even defend the repression of non-violent protesters. I have heard them called "global village idiots," "incoherent morons," and "flat earth advocates." World Trade Organization President Michael Moore once remarked that he would like to vomit all over the demonstrators. With allies like this, who needs enemies?

True free trade will bring great benefits to us all, especially to the world's poor and downtrodden. Those who understand and support this should not leave its defense to those who would use police terror, suppress free speech, or belittle their opponents. The advancement of liberty and prosperity is too important. ◆

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Global Village or

Global Pillage?

Why we must create a universal culture of liberty

By Mario Vargas Llosa

A short time ago, the town council of El Borge, a tiny town in the Spanish province of Málaga, held a plebiscite. The citizens were asked to decide between two alternatives: humanity or neoliberalism. The result of the poll was 515 votes for humanity and 4 votes for neoliberalism.

I have not been able to chase those four votes from my thoughts. In the face of such a dramatic dilemma, those four musketeers did not hesitate to charge against humanity in the name of the macabre scarecrow of neoliberalism. Were they four clowns or four sages? Was this a "Borgean" joke or was it the only sign of sense in the entire farcical plebiscite?

Not long after, in Chiapas, an International Congress Against Neoliberalism was convened by Subcomandante Marcos, the latest hero of the frivolous, media-driven politics of the West. Among the attendees were numerous Hollywood luminaries, a belated Gaullist, and Danielle Mitterrand, the incessant widow of President François Mitterrand, who gave her socialist benediction to the event.

Those are quaint episodes, but it would be a grave error to write them off as the insignificant fluttering of human idiocy. In truth, they are but the tense and explosive extremes of a vast political and ideological movement, solidly rooted in sectors of the left, center, and right, and united in a tenacious distrust of liberty as the solution to the problems of humanity. They have built up their fears into a new phantom and called it

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It should not surprise us that the uninformed citizens of El Borge or Chiapas believe that the true enemy of mankind–guilty of all evil, suffering, poverty, exploitation, and crimes against human rights committed against millions of human beings–is that terrifying, destructive force known as neoliberalism.

"neoliberalism." In the mumbo jumbo of sociologists and political scientists, it is also known as the "only thought," a scapegoat on which to hang both present calamities and those of the past.

Brainy professors from the University of Paris, Harvard University, and the University of Mexico pull their hair out trying to show that free markets do little more than make the rich richer and the poor poorer. They tell us that internationalization and globalization only benefit the giant multinationals, allowing them to squeeze developing countries to the point of asphyxiation and to devastate entirely the planetary ecology. So it should not surprise us that the uninformed citizens of El Borge or Chiapas believe that the true enemy of mankind—guilty of all evil, suffering, poverty, exploitation, discrimination, abuses, and crimes against human rights committed on five continents against millions of human beings—is that terrifying, destructive force known as neoliberalism. It is not the first time in history that what Karl Marx called a "fetish"—an artificial construction, but at the service of very concrete interests—acquired consistency and began to provoke such great disruptions in life, like the genie who was imprudently catapulted into existence when Aladdin rubbed the magic lamp.

Liberal caricatures

I consider myself a liberal. I know many people who are liberals, and many more who are not. But, throughout a career that is beginning to be a long one, I have not known a single neoliberal. What does a neoliberal stand for? What is a neoliberal against? In contrast with Marxism, or the various kinds of fascism, true liberalism does not constitute a dogma, a closed and self-sufficient ideology with prefabricated responses to all social problems. Rather, liberalism is a doctrine that, beyond a relatively simple and clear combination of basic principles structured around a defense of political and economic liberty (that is, of democracy and the free market), welcomes a great variety of tendencies and hues. What it has not included until now, nor will it include in the future, is that caricature furnished by its enemies with the nickname *neoliberal.*

A "neo" is someone who pretends to be something, someone who is at the same time inside and outside of something. It is an elusive hybrid, a straw man set up without ever identifying a specific value, idea, regime, or doctrine. To say "neoliberal" is the same as saying "semiliberal" or "pseudoliberal." It is pure nonsense. One is either in favor of liberty or against it, but one cannot be semi-in-favor or pseudo-in-favor of liberty, just as one cannot be "semipregnant," "semiliving," or "semidead." The term has not been invented to express a conceptual reality, but rather, as a corrosive weapon of derision. It has been designed to devalue semantically the doctrine of liberalism. And it is liberalism—more than any other doctrine—that symbolizes the extraordinary advances that liberty has made in the long course of human civilization.

We should celebrate the achievements of liberalism with joy and serenity, but without hubris. We must understand that although the achievements of liberalism are notable, that which remains to be done is more important still. Moreover, as nothing in human history is fated or permanent, the progress obtained in these last decades by the culture of liberty is not irreversible. Unless we know how to defend it, the culture of liberty can become stagnant and the free world will lose ground to the forces of authoritarian collectivism and tribalism. Donning the new masks of nationalism and religious fanaticism, those forces have replaced communism as the most battle-hardened adversaries of democracy.

For a liberal, the most important thing to occur in the last century was the defeat of the great totalitarian offensives against the culture of liberty. Fascism and communism, each in its moment, came to threaten the survival of democracy. Now they belong to the past, to the dark history of violence and unspeakable crimes against human rights and rationality, and there is no indication that they will rise from their ashes in the immediate future. Of course, fascism lingers in the world. At times, ultra-nationalist and xenophobic parties, much like Jean Marie Le Pen's National Front in France or Jorg Haider's Liberal Party in Austria, attract a dangerously high level of electoral support. Also, there exist anachronistic vestiges of the vast Marxist archipelago, represented today by the flagging specters of Cuba and North Korea. Even so, those fascist and communist offshoots do not constitute a serious alternative—less still a considerable threat—to the democratic option.

Dictatorships still abound, true enough, but in contrast to the great totalitarian empires, they lack messianic aura and ecumenical pretensions; many of them, like China, are now trying to combine the monolithic politics of the single-party state with free-market economics and private enterprise. In vast regions of Africa and Asia, above all in Islamic societies, fundamentalist dictatorships have arisen that have returned those countries to a state of barbaric primitivism in matters concerning women, education, information, and basic civic and moral rights. Still, whatever the horror represented by countries like Afghanistan, Sudan, or Iran, they are not challenges that the culture of liberty needs to take seriously: The backwardness of the ideology they profess condemns those regimes to fall ever farther behind in the race of modernity—a swift race, in which the free countries have already taken a decisive lead.

Battling the apocalyptics

Despite the gloomy geography of persistent dictatorships, liberals have much to celebrate in these past decades. The culture of liberty has made overwhelming advances in vast regions of Central and Western Europe, Southeast Asia, and Latin America. In Latin America, for the first time in history, civilian governments—born of more or less free elections—are in power in nearly every country. (The exceptions are Cuba, an explicit dictatorship, and until recently Peru, a subtle dictatorship.) Even more notably, those democracies are now applying—sometimes with more gritting of teeth than enthusiasm, sometimes with more clumsiness than skill—market policies, or at least, policies that are closer to a free economy than to the interventionist and nationalizing populism that traditionally characterized the governments of the continent.

Perhaps the most significant thing about that change in Latin America is not the quantity, but the quality. Although it is still common to hear intellectuals who have been thrown out of work by the collapse of collectivist ideology howling at neoliberalism, their howls are like those of wolves to the moon. From one end of Latin America to the other, at least for now, a solid consensus exists in favor of the democratic system and against dictatorial regimes and collectivist utopias. Although that consensus is more restricted with regard to economic policy, Latin American governments are also bowing to liberal economic doctrine.

Some governments are embarrassed to confess that, and others—including some real Tartuffes—cover their bases by spewing out volleys of rhetoric against neoliberalism. Nevertheless, they have no other recourse than to privatize businesses, liberalize prices, open markets, attempt to control inflation, and try to integrate their economies into international markets. They have come to learn —the hard way—that in today's economic environment, the country that does not follow those guidelines commits suicide. Or, in less terrifying terms: That country condemns itself to poverty, decay, and even disintegration. Many sectors of the Latin American left have evolved from being bitter enemies of economic liberty to embracing the wise confession of Václav Havel: "Though my heart may be left of center, I have always known that the only economic system that works is a market economy....This is the only natural economy, the only kind that makes sense, the only one that can lead to prosperity, because it is the only one that reflects the nature of life itself."

Those signs of progress are important and give historical validity to liberal theses. By no means, however, do they justify complacency, since one of the most refined (and rare) certainties of liberalism is that historical determinism does not exist. History has not been written so as to negate any further appeal. History is the work of men, and just as men can act rightly with measures that push history in the direction of progress and civilization, they can also err, and by conviction, apathy, or cowardice, allow history to slide into anarchy, impoverishment, obscurantism, and barbarism. The culture of democracy can gain new ground and consolidate the advances it has achieved. Or, it can watch its dominions shrink into nothingness, like Balzac's *peau de chagrin.* The future depends on us—on our ideas, our votes, and the decisions of those we put into power.

For liberals, the war for the progress of liberty in history is, above all else, an intellectual struggle, a battle of ideas. The Allies won the war against the Axis, but that military victory did little more than confirm the superiority of a vision of man and society that is broad, horizontal, pluralist, tolerant, and democratic, over a vision that was narrow-

minded, truncated, racist, discriminatory, and vertical. The disintegration of the Soviet empire before the democratic West validated the arguments of Adam Smith, Alexis de Tocqueville, Karl Popper, and Isaiah Berlin concerning the open society and the free economy, and invalidated the fatal arrogance of ideologues like Karl Marx, V.I. Lenin, and Mao Zedong, who were convinced that they had unraveled the inflexible laws of history and interpreted them correctly with their proletarian dictatorships and economic centralism. We should also remember that the West achieved its victory over communism at a time when its societies were full of inferiority complexes: Ordinary democracy offered scant "sex appeal" next to the fireworks of the supposedly classless societies of the communist world.

The present battle is perhaps less arduous for liberals than the one that our teachers fought. In that battle, central planners, police states, single-party regimes, and state-controlled economies had on their side an empire that was armed to the teeth, as well as a formidable public relations campaign, conducted in the heart of democracy by a fifth column of intellectuals seduced by socialist ideas.

Today, the battle that we must join is not against great totalitarian thinkers, like Marx, or intelligent social democrats, like John Maynard Keynes, but, rather, against stereotypes and caricatures that attempt to introduce doubt and confusion in the democratic camp; hence the multiple offensive launched from various trenches against the monster nicknamed neoliberalism. The battle is also against the apocalyptics, a new species of skeptical thinker. Instead of opposing the culture of democracy, as did Georg Lukacs, Antonio Gramsci, or Jean-Paul Sartre, the apocalyptics are content to deny it, assuring us that democracy does not really exist and that we are dealing with a fiction, behind which lurks the ominous shadow of despotism.

Dictators or democrats?

Of that species, I would like to single out an emblematic case: that of Robert D. Kaplan. In "Was Democracy Just a Moment?," a provocative essay originally published in the December 1997 issue of *The Atlantic* and later incorporated into the 2000 book *The Coming Anarchy: Shattering the Dreams of the Post Cold War*, Kaplan maintains that, contrary to the optimistic expectations about the future of democracy heralded by the death of Marxism in Eastern Europe, humanity is actually headed toward a world dominated by authoritarianism. In some cases, this authoritarianism is undisguised, in others, it is masked by institutions of civil and liberal appearance. For Kaplan those institutions are mere decorations. The real power is—or will soon be—in the hands of giant international corporations, the owners of technology and capital that, thanks to their ubiquity and extraterritoriality, enjoy almost total impunity in their actions.

"I submit," he writes, "that the democracy we are encouraging in many poor parts of the world is an integral part of a transformation toward new forms of authoritarianism; that democracy in the United States is at greater risk than ever before, and from obscure sources; and that many future regimes, ours especially, could resemble the oligarchies of ancient Athens and Greece more than they do the current government in Washington."

His analysis is particularly negative with regard to the possibility that democracy may be able to find root in the developing world. According to Kaplan, all Western efforts to impose democracy in countries that lack a democratic tradition have resulted in terrible failures. Some of those failures have been very costly, as in Cambodia, where $2 billion invested by the international community have not advanced legality or liberty even a single millimeter in the ancient kingdom of Angkor. Efforts in places like Sudan, Algeria, Afghanistan, Bosnia, Sierra Leone, Congo, Mali, Russia, Albania, or Haiti, have created chaos, civil wars, terrorism, and the resurgence of ferocious tyrannies.

Kaplan looks with similar disdain upon the Latin American process of democratization. The exceptions are Chile and Peru. In his view, the fact that the first experienced the explicit dictatorship of Augusto Pinochet and the second experienced the oblique dictatorship of Alberto Fujimori guarantees stability to those countries. By comparison, the so-called rule of law cannot preserve that stability in Colombia, Venezuela, Argentina, or Brazil. In his judgment, the weakness of civil institutions, the excesses of corruption, and the astronomical inequalities are pushing "a backlash from millions of badly educated and newly urbanized dwellers in teeming slums,

who see few palpable benefits to Western parliamentary systems."

Kaplan says what he thinks with clarity, and what he thinks is that democracy and the developing world are incompatible: "Social stability results from the establishment of a middle class. Not democracies but authoritarian systems, including monarchies, create middle classes." He cites the examples of the Asian Pacific Basin (his prime example is the Singapore of Lee Kuan Yew) and Pinochet's Chile. Although he does not mention it, he could have also cited Francisco Franco's Spain. The present-day authoritarian regimes he sees creating middle classes and making democracy possible are the China of "market socialism" and Fujimori's Peru (a military dictatorship with a civilian puppet as figurehead). Those are the models of development that he sees as forging "prosperity from abject poverty." For Kaplan the choice in the developing world is not "between dictators and democrats" but between "bad dictatorships and slightly better ones." In his opinion, "Russia may be failing in part because it is a democracy and China may be succeeding in part because it is not."

True social progress

I have taken the space to review these arguments because Kaplan says out loud what others—many others—think but do not dare say. Kaplan's pessimism with respect to the developing world is great; but it is not less than that inspired in him by the developed world. Once the efficient dictatorships have developed the poor countries and the new middle classes seek to gain access to Western-style democracy, they will only be chasing a mirage, he says. Western democracy will have been supplanted by a system (similar to those of Athens and Sparta) in which oligarchies—the multinational corporations, operating on the five continents—will have snatched from governments the power to make significant decisions for society and the individual. The oligarchies will exercise that power without accountability, because power comes to the giant corporations not by electoral mandate but through their technological and economic strength. Kaplan reminds us that out of the top 100 economies in the world, 51 are not countries but businesses, and that the 500 most powerful companies alone represent 70 percent of world commerce.

Those arguments are a good point of departure for comparison with the liberal vision in the new millennium. In that vision, the human creation of liberty is the source of the most extraordinary advances in the fields of science, human rights, technical progress, and the fight against despotism and exploitation.

The most outlandish of Kaplan's arguments is that only dictatorships create middle classes and bring stability to countries. If that were so, the paradise of the middle classes would not be the United States, Western Europe, Canada, Australia, and New Zealand. It would be Mexico, Bolivia, or Paraguay. Latin American history is a veritable zoo of petty tyrants, strongmen, and maximum leaders. Juan Domingo Perón—to give but one example—nearly destroyed the middle class of Argentina, a middle class that until his rise to power was vast and prosperous and had developed its country at a faster pace than most of the European countries. Forty years of dictatorship have not brought Cuba the least prosperity, but have reduced it to the status of an international beggar; to keep from starving, Cubans have been condemned to eat grass and flowers, while their women prostitute themselves to capitalist tourists.

Of course, Kaplan can say that he is not talking about all dictatorships, but only the efficient ones like those of Pacific Asia and those of Pinochet and Fujimori. I read his essay, coincidentally enough, just when the supposedly efficient autocracy of Indonesia was crumbling, General Suharto was renouncing his office under pressure, and the Indonesian economy was collapsing. Shortly before that, the ex-autocracies of Korea and Thailand had collapsed and the famous Asian Tigers had begun to vanish into smoke, like something out of a Hollywood super-thriller. Apparently, those market dictatorships were not as successful as Kaplan thought. They are now gathered on their knees before the International Monetary Fund, the World Bank, the United States, Japan, and Western Europe, asking to be saved from total ruin.

From the economic point of view, the dictatorship of General Pinochet was successful, and up to a certain point (that is, if efficiency is only measured in terms of the rate of inflation, the fiscal deficit, official reserves, and the growth rate of gross domestic product) so was Fujimori's dictatorship. Even so, we are talking about a very relative efficiency.

The most outlandish of Robert Kaplan's arguments is that only dictatorships create middle classes and bring stability to countries. If that were so, the paradise of the middle classes would not be the United States and Western Europe. It would be Mexico, Bolivia, or Paraguay.

Under liberal doctrine, progress is simultaneously economic, political, and cultural. That is for practical as well as moral reasons. Open societies, in which information circulates without impediment and in which the rule of law governs, are better defended against crises than satraps.

When we leave the comfortable security of an open society (the United States, in Kaplan's case) and examine those regimes from the perspective of those who have suffered the crimes and outrages of dictatorship, that relative efficiency vanishes. In contrast with Kaplan, we liberals do not believe that ending economic populism—or snapping the neck of inflation—constitutes the slightest progress for a society if, at the same time that prices are freed, public spending is cut, and the public sector is privatized, a government causes its citizens to live in abject fear.

Progress does not run roughshod over the rights of citizens. Progress does not deprive citizens of a free press or deny them recourse to an independent judiciary when they are abused or defrauded. Progress does not permit that citizens be tortured, expropriated, disappeared, or killed, according to the whim of a country's ruling gang. Under liberal doctrine, progress is simultaneously economic, political, and cultural. Or, simply, it is not progress. That is for practical as well as moral reasons. Open societies, in which information circulates without impediment and in which the rule of law governs, are better defended against crises than satraps. That was demonstrated by the Mexican regime several years ago and more recently by General Suharto in Indonesia. The role performed by the lack of genuine legality in the authoritarian countries of the Pacific Basin has not been sufficiently underlined in the current crisis.

Strong government vs. big government

How many efficient dictatorships have there been? And how many inefficient ones? How many dictatorships have sunk their countries into prerational savagery, as is happening today in Algeria and Afghanistan? The great majority of dictatorships are inefficient; efficient ones are the exception. Isn't it reckless to opt for the recipe of dictatorship to achieve development—to hope that such a regime will be efficient, decent, and transitory—and not the contrary? Aren't there less risky and cruel paths to economic progress? Indeed, there are, but people like Kaplan do not wish to see them.

In countries in which democracy flourishes, the culture of liberty is not necessarily a longstanding tradition. It was not a tradition in any of the current democracies until, after many setbacks and trials, those societies chose that culture and moved forward, perfecting it along the way, until they made that culture their own. International pressure and aid can be a factor of the first order in a society's adoption of democratic culture, as demonstrated by Germany and Japan, two countries as lacking in democratic tradition as any in Latin America. In the short time since the end of World War II, they have joined the advanced democracies of the world. Why, then, would developing countries (or Russia) be unable to free themselves from the authoritarian tradition? Why would they be unable to do as the Japanese and Germans did, and make the culture of liberty theirs?

Contrary to the pessimistic conclusions that Kaplan reaches, globalization opens up a first-class opportunity for the democratic countries of the world—and especially for the advanced democracies of America and Europe—to expand tolerance, pluralism, legality, and liberty. Many countries are still slaves to the authoritarian tradition, but we should remember that authoritarianism once held sway over all of humanity. The expansion of the culture of liberty is possible as long as the following occur:

(a) We have a clear belief in the superiority of this culture over those that legitimize fanaticism, intolerance, and racism, and that legitimize religious, ethnic, political, or sexual discrimination.

(b) We adopt coherent economic and foreign policies that encourage democratic tendencies in the developing world, while penalizing those regimes that, like China's, promote liberal policies in the economic field but are dictatorial in their politics.

Unfortunately, contrary to Kaplan's position, the discrimination in favor of democracy that brought so many benefits to countries like Germany, Italy, and Japan a half century ago has not been applied by the democratic countries of today to the rest of the world. When it has been applied, it has been done in a partial and hypocritical manner, as in the case of Cuba.

Early in the new century, however, the advanced democracies of the world have a stronger incentive to act with firm and principled conviction in favor of democracy. That incentive comes from the existence of a new danger, a danger that Kaplan mentions in his essay. In apocalyptic terms, Kaplan prophesies the emergence of a future nondemo-

cratic world government composed of powerful multinational corporations that operate without restraint in all corners of the globe. That catastrophic vision points to the real danger of which we are conscious. The disappearance of economic borders and the proliferation of world markets stimulate fusion and alliance among businesses as they attempt to compete more effectively in all areas of production.

The formation of giant corporations does not constitute in and of itself a danger to democracy as long as democracy is a reality, that is to say, as long as there are just laws and strong governments. (For a liberal, "strong" means "small and effective," rather than "big.") In a market economy that is open to competition, a big corporation benefits the consumer because its scale enables it to reduce prices and multiply services. Danger does not lie in the size of a business; danger lies in monopoly, which is always a source of inefficiency and corruption. As long as there are democratic governments that command respect for the law—governments that will even prosecute Bill Gates if he transgresses that law—there is no danger. As long as democratic governments maintain markets that are open to competition and are free of monopolies, then there is nothing to fear from giant corporations, which frequently serve society by spearheading scientific and technological progress.

Liberal utopia, liberal reality

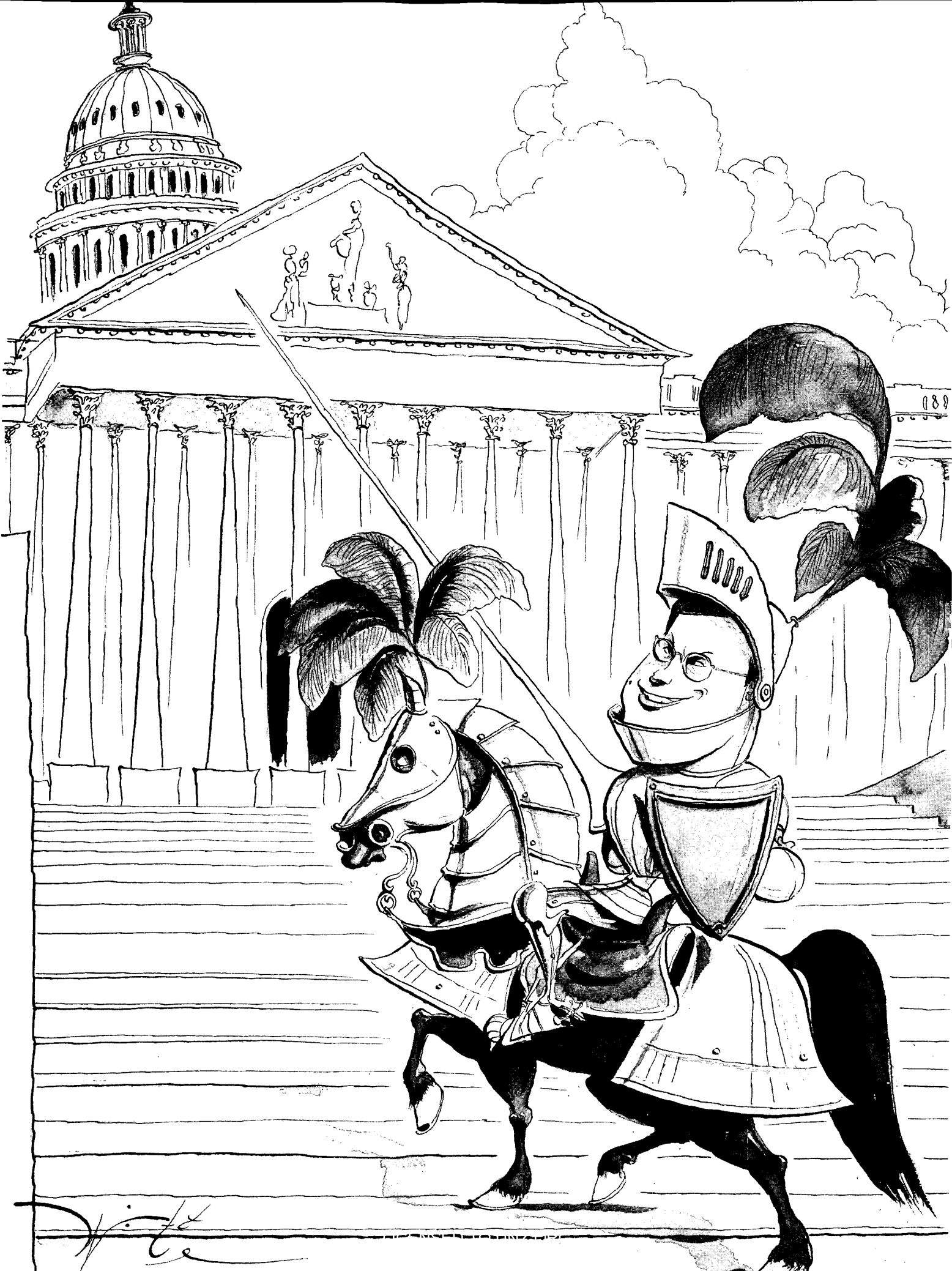
The capitalist firm has the nature of a chameleon. In a democratic country, it is a beneficent institution of development and progress. However, for countries in which there is no rule of law and no free markets and everything is resolved by the absolute will of a leader or a ruling clique, the capitalist firm can be a source of catastrophe. Corporations are amoral, and they adapt with ease to the rules of the game in the environment in which they operate. If in many developing countries the behavior of multinationals is reprehensible, the ultimate responsibility rests on those who fix the rules of the game in economic, social, and political life. We cannot blame firms for following those rules in their quest for profits.

From that reality, Kaplan extracts this pessimistic conclusion: The future of democracy is gloomy because in the coming millennium the giant corporations will act in the United States and Western Europe with the same impunity that they currently do in, say, the Nigeria of the late Col. Abacha.

In truth, there is no historical or conceptual reason for such an extrapolation. Instead, we should reach the following conclusion: It is imperative that all countries today under dictatorship evolve quickly toward democracy and develop the kind of free legal order that can demand of corporations that they act decently and equitably, as they are required to do in the advanced democracies. Without the globalization of legality and liberty, economic globalization presents a serious danger for the future of civilization—and, above all, for the planetary ecology. The great powers have a moral obligation to promote democratic processes in the developing world. They also have a practical obligation. With the evaporation of borders, the greatest guarantee that economic forces will benefit all people is to ensure that throughout the world, economic life flows within the limits of liberty and competition, and is guided by the incentives, rights, and restraints imposed by democratic society.

None of that will be easy, and none of it will be achieved in a short time. For liberals, however, it is a great incentive to know that we are working toward an attainable goal. The idea of a world united around a culture of liberty is not a utopia but a beautiful and achievable reality that justifies our efforts. As Karl Popper, one of our greatest teachers, said, "Optimism is a duty. The future is open. It is not predetermined. No one can predict it, except by chance. We all contribute to determining it by what we do. We are all equally responsible for its success." ◆

Mario Vargas Llosa is the author of many books, including the novel Aunt Julia and the Scriptwriter *(recently rereleased in paperback by Faber & Faber). His new book,* The Feast of the Goat, *will be published by Farrar, Straus & Giroux this fall. In 1990, he ran for president of Peru, winning a plurality of votes in the first round but losing a subsequent runoff election to Alberto Fujimori, who was ousted from power last year following a bribery scandal. This article, translated by Tom Jenney, is adapted from an essay that appears in* Global Fortune: The Stumble and Rise of World Capitalism, *edited by Ian Vasquez (Cato Books).* *Copyright © 2000 by the Cato Institute. All rights reserved.*



Prof. Smith Goes to Washington

And proposes an end to campaign finance laws

Interviewed by Michael W. Lynch

The campaign finance reform establishment went absolutely insane in the spring of 2000. That's when Sens. Mitch McConnell (R-Ky.) and Trent Lott (R-Miss.) worked a deal to persuade President Bill Clinton to nominate Bradley A. Smith, a professor of law at Capital University in Columbus, Ohio, to the Federal Election Commission. (In exchange for the Smith nomination, the senators guaranteed a vote on 16 Clinton appointees to the federal bench.)

Vice president and presidential candidate Al Gore—remember him?—took time out from scaring senior citizens about losing Medicare to promptly declare Smith "unfit for office," even though his own administration had nominated the guy. The Senate's dynamic duo on campaign finance issues, Sens. John McCain (R-Ariz.) and Russell Feingold (D-Wis.), similarly declared its staunch opposition. "Sending Brad Smith to the FEC is akin to confirming a conscientious objector to be secretary of defense," huffed Vietnam vet McCain during a marathon, 10-hour debate over Smith's confirmation. "I stand proudly by Theodore Roosevelt in believing the 1907 [campaign finance] reforms were valid," McCain continued. "Mr. Smith does not." Feingold expressed a similar sentiment, if in a more hackneyed formulation: "Prof. Smith on the FEC would really be a case of the fox guarding the hen house."

Newspaper editorialists were conflicted over whether the Harvard-educated and widely published prof was technically fit for the post. "Smith is clearly qualified," opined *The Washington Post.* "His background in no way qualifies him for a spot on the commission he would just as soon abolish," wrote *The Atlanta Journal and Constitution.* But virtually all agreed that he was the wrong person for the job. The *Post* explained the reasoning well: "He simply does not believe in federal election law."

That may well be the case. Before signing on to the FEC, Smith wrote extensively on the mind-numbing topic of campaign-finance and election law. His findings were quite radical, at least from the point of view of professional reformers and regulators. Smith concluded not only that

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restrictions on campaign donations are unconstitutional, but that they degrade America's political process by strangling grassroots efforts in a tangle of red tape. Moreover, further efforts to regulate campaign contributions increase the advantage of professionals and insiders over ordinary citizens, provide the press with more power, and increase the already considerable electoral advantage of incumbents.

"We must limit, fine, and penalize. And then all will be well. We will weed out corruption, and have true political equality," said Smith in a speech last year at Catholic University, mocking the mindset of reformers. "I would suggest to you that campaign finance regulation is like Frankenstein's monster, well-intentioned, but hopelessly misguided and ultimately irredeemable, yet impossible to kill, and creating havoc wherever it goes."

Make no mistake: Smith thinks the monster needs to die. In a 1997 *Wall Street Journal* opinion piece, he called for a repeal of the Federal Elections Campaign Act, the very law the FEC was created to administer. After being confirmed as an FEC member in May 2000, Smith hardly toned things down. He was sworn into office by Judge James L. Buckley, the former New York senator whose challenge to the '74 law culminated in the precedent-setting Supreme Court case *Buckley v. Valeo.* (To underscore his stance, Smith held his swearing-in ceremony at the Cato Institute, which is highly critical of campaign finance laws.)

Earlier this year, Smith published *Unfree Speech: The Folly of Campaign Finance Reform* (Princeton). Washington Editor Michael W. Lynch spoke with Smith in April, just as the Senate passed the McCain-Feingold campaign finance reform bill. McCain-Feingold, the most expansive campaign finance legislation in years, seeks to outlaw so-called soft money contributions to political parties, restrict corporations and unions from running issue ads, regulate negative campaign advertisements by candidates, and restrict issue advertising in the last 60 days of an election cycle. A similar bill, which has passed the House twice in previous sessions, is expected to hit the House floor again this summer.

REASON: You've been at the FEC for about a year now. Do you like the job?

Bradley A. Smith: I do. I do enjoy the job.

REASON: During your confirmation process, critics charged you were unfit for the job. They said, How could you enforce a law you didn't believe in? Some are still saying that. How do you respond?

Smith: I get tired of hearing it. People always say that in an accusatory manner. It's a very pernicious idea. It's the same charge that has been used against Atty. Gen. John Ashcroft and Secretary of Energy Spencer Abraham. It's the argument that the law can only be enforced by zealots. It's pernicious because it suggests that in fact there is no such thing as a rule of law and we can never trust people in power to restrain themselves in any way. It cuts against the very idea that makes our country work. It makes it very hard to improve governing systems if people think it is the norm for people in power to do whatever they want.

REASON: To clarify: Even if you think the contribution limits are unconstitutional, you are going to enforce them because that's the way the law is both written and interpreted.

Smith: Right. I would add that I have also taken an oath to uphold the Constitution and I don't think the Supreme Court has a monopoly on the Constitution. I think at some point an official, even an appointed official, has the ability to say, "I'm just not going to do that." Maybe he needs to resign, but I don't think he needs to. He can say, "I'm not going to do that. I'm in this position. I'm entitled to be in this position, I'm not going to do that."

That said, I think you have to be very hesitant in doing that. It needs to be an extreme case. And the reason is because in our process, ultimately we take the Supreme Court as the last arbiter of the Constitution. If the Congress has decided a law is constitutional and they've passed it, the president has decided it's constitutional and he's signed it, and the Supreme Court has decided it's constitutional and they've upheld it, proclaiming a law unconstitutional is something an appointed bureaucrat would not want to take lightly, to say the least.

REASON: How have your views changed since you've been in office?

Smith: My views have not changed a whole lot, although I have found that the regulations are worse than I thought, especially in how they effect grassroots politics. This comes from seeing cases involving small county committees and losing primary candidates, and so on. I haven't seen too much to make me think I was wrong about campaign finance laws, and I've seen many things to make me think I was not strong enough in my criticism.

For example, during my time in office, I have begun to question if there's any benefit from disclosure. I'm not seeing that we are getting many benefits out of it, and it's one of the areas where we are really ending up discouraging grassroots organizing. The disclosure regulations are some of the most burdensome. Disclosure limits free speech because it allows the government to retaliate against people. The Supreme Court has consistently held that people do have a right to anonymous speech. The cases speak for themselves.

The most prominent one is probably *NAACP v. Alabama* (1964), when Alabama wanted to know who was funding the NAACP's activities. We can see how that would be intimidating. Then there's *McIntyre v. Ohio Elections Commission* (1995). McIntyre was doing anonymous brochures against a school tax, which all the school officials supported. She had children in the schools who

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needed grades and access to such things as athletic teams and bands. She didn't necessarily want her name known, even though it was important for her to fight this issue. Another major case was *Brown v. Socialist Workers '74 Campaign Committee* (1982). The socialists rightly said, "If we have to reveal our donors, they won't give us money. They will get harassed. Their businesses will get blackballed and that sort of thing." Disclosure can be more inhibiting than people think.

REASON: What's the most disturbing case you've dealt with so far?

Smith: I've come across a variety of cases that are disturbing in different ways. Some cases are disturbing because I see corruption going on. Some of my critics have argued that I've said there's no corruption with money in politics. That's never been quite right. What I *have* said is that corruption has never been anywhere near the problem that people think it is, that trying to get rid of corruption comes with a price, and that I'm not sure you can get rid of it. So when I've seen cases when there really does seem to be corruption, it's disturbing because a) I don't like to see the corruption, and b) it is the price we'd pay for the kind of views I have.

REASON: What kind of corruption?

Smith: Well, to be honest, I can't tell you because the cases I am thinking of are still in the process. But they are the kind of cases where people complain about someone selling access. But what I find most interesting is that the real problem in these cases is not that constituents are corrupting the government. Rather, the government is corrupting the people. The officials are the ones saying, "Look, if you want this or that, this is what you have to pay." That's discouraging to me. But I don't think it changes my overall view or is inconsistent with my view, which is that the problem is not so great as people think and efforts to solve it cause more problems than they solve.

Other cases disturb me in different ways. These are the cases where I see campaign finance laws impacting the ability of Americans to participate in the political system. I am disturbed to the extent to which filing a charge against a campaign or a person is just a political weapon. Political partisans file virtually all the cases we get. They often don't care what the end result is, just so long as they can get it out there and have a press conference and claim that "serious allegations have been made" against candidates they don't like.

I'll give you a specific case. A fellow from Texas named Mac Warren ran for Congress last fall. He lost in a four-way primary and spent quite a bit of his own money to run. Not $100,000 or anything, but enough for most of us to say, "Wow, he took a hit." He ran a credible race but he didn't win. In the primary he spent some money to send out a couple of pieces of literature that had "Vote for Mac Warren for Congress" written all over them. But his campaign forgot to put on the legally required disclaimer that specifically said that the campaign committee authorized the message and that disclosed who paid for it. So we get a complaint and the campaign gets fined. The campaign treasurer is personally liable for the fine and at that point no PAC is going to give them any more money. Once those charges get filed and fines levied, they don't have any more money. They can't raise any more money. These laws are just a way of telling people that we don't want ordinary people in politics.

People send the FEC letters telling us that the lesson they learned is that they will never be involved in politics again. It's just not worth it, or it's clear that this is intended only to be done by professionals. Or that average people are no longer supposed to be involved in campaigns.

REASON: What's the most ridiculous case you've come across?

Smith: A candidate for Congress took out a loan and put the money into her campaign. Her husband co-signed on the loan. Of course, you can contribute as much of your own money as you want to your campaign. But once the husband co-signed on the loan, we deemed it to be half his money. So when she dumped it all into her campaign, we said that meant he contributed more than the legal limit and we had to fine him. If our goal is to prevent husbands from corrupting their wives, we need to

give the FEC a whole lot more power. We've got similar cases of sons giving too much money to their parents and cases of parents giving too much money to their sons. Where's the corruption here? Why are we doing this? And that's true of much of what we do here.

REASON: What do the fines typically run?

Smith: In that kind of case they are pretty small, a couple of thousand dollars.

REASON: What do you spend most of your time doing as a commissioner?

Smith: Probably reading. There are just lots and lots of reports. The way the commission is structured, we have the general counsel on a short leash. We have to approve any subpoena, and so we are constantly reviewing paper that comes up from the general counsel's office urging us to take one action or another and asking us to make a decision on it.

REASON: So you still think that much of campaign finance law is unworkable?

Smith: Yes, probably even more so than I did before. I've seen the particulars, the impact it's having at the grassroots and all the clever ways that are out there for the people who have the resources and lawyers to get around the law. They're always talking about having to close this loophole or that loophole. The government spends $2 trillion a year. It claims the right to regulate everything. Folks are going to figure out a way to participate in the political process.

One of the things I have been pointing out about McCain-Feingold is all the things it will not do. It won't prevent pardons of Marc Rich. It won't prevent people from giving donations to the presidential library. It won't prevent them from hiring a well-connected lawyer like Jack Quinn. It's already illegal to pay a bribe. It's not going to prohibit Chinese contributions. That's already against the law. It's not going to stop people from funneling contributions through other people. That's already against the law. It really doesn't do much, and people are going to find other ways to be involved in politics.

REASON: Let's talk about McCain-Feingold. You've said it's just another way for incumbents to entrench themselves.

Smith: Definitely. Not only does the system already favor incumbents, but look at the amendments they passed for McCain-Feingold. The first one was the anti-millionaires amendment. Challengers need more money than incumbents because they have lots of trouble raising money under contribution limits. One of the few types of challengers who can threaten incumbents is millionaires. So immediately the Senate passes a rule that will help them against these millionaire challengers. I guess the constitutional theory is that people running against millionaires are not easily corrupted but that incumbents who are running against average citizens are.

The second amendment they passed was one giving themselves the lowest guaranteed rate for television and radio advertising and prohibiting stations from bumping their ads. But if you and I get together and want to run some ads critical of the senators, we don't get that rate or that restriction.

They also passed an amendment making it harder to run negative ads. The bill would require candidates to personally have their faces on the screen if they want to say negative things about their opponents. I don't know whether that will stop negative ads. But negative ads are most effective against incumbents. Generally, if you want to beat an incumbent, you first have to explain to people why the incumbent shouldn't be in office. Then you can go about selling yourself. So again, it's a provision that is clearly designed to help incumbents more than challengers.

REASON: McCain and Feingold say that we need to squeeze money out of campaigns, that it is corrupting, that it changes the way politicians act. Are they wrong?

Smith: Money works a lot of ways in politics. In terms of getting somebody elected, you'd always prefer to have more money than less money. We do know quite well that the key thing is to spend enough. Just what is *enough* will vary depending on what state or district you are from. A couple of years ago, it was $600,000 for House races. Any challenger who spent less than that lost, and any who spent at least that much had about a 40 percent chance of winning. It really didn't matter what the incumbent spent. Spending helps incumbents, but it helps challengers more. Basically any candidate, if they spend enough money, can make it a competitive race.

Another thing we know, which follows from making races competitive, is that any money that is spent will be informative to the public. Spending increases the understanding of where candidates are on the political spectrum and of what their views are on the issues. Whether it increases or decreases turnout depends on whether it is spent to increase turnout or decrease turnout. But either way, it increases knowledge, and that's important in showing that it's part of our speech rights. That's the role of money in how it helps people get elected. It helps challengers more than incumbents. It's not the be-all and end-all, but it's important.

As I've said, there is very little evidence that money is out-and-out corrupting. As important, there are very few cases where campaign finance laws do anything to stop straightforward corruption, with people walking off with sacks of money. Most of that would be illegal, anyway, under bribery statutes. Money probably plays some role in getting people access to congressmen and senators, even though most donors never ask for access and congressmen and senators meet with people every day who've never made a donation. But it probably will help in some cases.

To the extent that that's true, I'm not sure it's a bad thing. Congressmen and senators spend their days meeting with other government officials, and it may be good for them to meet with some private individuals from time to time. It's not like getting money out of the campaign

"One of the few types of challengers who can threaten incumbents is millionaires. So the Senate passes a rule that will help them against these millionaire challengers."

system would mean that congressmen would meet with average Joes from their district. It would probably mean that they would spend more time playing golf or meeting with lobbyists.

REASON: Money doesn't change the way politicians vote?

Smith: It doesn't change politicians' votes in a straightforward way: "This guy gave me a contribution, and I've got to do this." It's probably a factor in the decision-making mix, and the congressmen and senators themselves don't know how important it is. They know who contributes, or at least in many cases they do. But the research shows that donors give to candidates who already think like them, not the other way around, and then they provide the candidates with information that might be useful to them.

When they vote, politicians consider their personal ideology, what the party wants, and what their constituents want, among other things. They also consider things like what their spouse thinks and what their staffers think, and of course their staffers have views on issues. They think about what the press is going to say on the editorial pages, but also how the press will report it on the news pages. Virtually all the research indicates that these factors are more important than who gives them money. And common sense suggests to us that they would be. There are a great many things that go into decision making, and I just think there's very little evidence to suggest that money is particularly important or particularly pernicious.

REASON: McCain-Feingold bans soft money and tightens regulations on ads by independent groups. What effect will this have on campaigns?

Smith: I think it will be bad for all the reasons I've just said. Soft money is used more than other forms of contributions to fund challengers—that's because parties have a direct interest in challengers winning. Individual contributions go mostly to incumbents. Corporate and union PACs go mostly to incumbents. Soft money goes almost evenly to challengers. So banning soft money harms challengers.

McCain-Feingold also limits all issue ads that mention a candidate in the last 60 days before an election, a provision that was ruled unconstitutional 25 years ago. One effect is that controversial issues might get shifted to the last 60 days of legislative calendars, when candidates can't be criticized for their votes. It will also make campaigns longer, because people will now have to run those ads earlier in the election cycle. This will make campaigns more expensive. It will weaken political parties and strengthen interest groups. All of these things are bad.

Interestingly, Deborah Goldberg, from the Brennan Center for Justice, a think tank at New York University School of Law, essentially told *National Review Online*, "Hey, if McCain-Feingold screws up elections even more, great. It'll convince people we need to have public financing." That's the ultimate goal. We'll have McCain-Feingold II a day after this thing is finally signed into law, because we'll have to do something about PACs and everything else that goes on.

REASON: What's wrong with public financing?

Smith: Public financing has a number of problems. Let's start with the basic claim that it will be "fair," since all candidates start out with the same amount of money. Well, it's not fair if one candidate has the support of the only major daily newspaper in the district; that candidate has more than the others. Public financing also raises first-principle problems: People don't like the government taxing them and giving the money to someone who says everything they hate. Finally, public financing, which is more accurately called taxpayer financing, doesn't solve most of the problems that they complain about, unless you also include all the other limits on speech as well. So long as people are able to talk about an issue and lobby, you are not going to get the money out of politics.

REASON: You basically think we should have more money in campaigns, not less. How would increasing the money help the political process?

Smith: Money gives outsiders a way to break into the system. Steve Forbes and Ross Perot shook up the system as much as anything has over recent years. They were able to do it because they themselves were the candidates and could spend the money necessary to put issues, such as debt reduction and the flat tax, on the map.

This also helps less-well-funded people. Ross Perot and Steve Forbes both spoke for millions of Americans who really weren't having anyone champion those causes. Historically it's people who are the real outsiders, who are poor, that need those kind of champions to come along

"Individual contributions go mostly to incumbents. Corporate and union PACs go mostly to incumbents. Soft money goes almost evenly to challengers. So banning soft money harms challengers."

for them. People like you and me, we are upper-middle-class and already have access to the press. We are not rich, but we don't benefit that much from a rich guy coming in because we already have ways to influence the political process. But it's the average Joe out there who needs exactly that kind of force to come into politics and speak for them. Sometimes that's a labor union, which are being restricted by McCain-Feingold. Sometimes it's an issue organization, like National Right to Life, which is being restricted. And sometimes it's just the wealthy eccentric millionaire, who is restricted if he is not willing to be the candidate.

REASON: When it comes to pushing candidates, what role have big donors played in the past?

Smith: Candidates used to be much freer from the obligation to raise funds. Before Ronald Reagan started to run for public office, guys like Henry Salvatori and some other wealthy Californians basically told him, "We'd like you to run for office—we'll take care of the money so you don't have to worry about it." Ronald Reagan never had to sell his soul for money or anything else. In 1967, Eugene McCarthy declared his candidacy for the Democratic presidential nomination just a couple of months before the New Hampshire primary. The Mott family and Wall Street banker Jack Dreyfus Jr. went in and poured lots of money into that campaign. A candidate could never get that kind of campaign off the ground today. The candidates were free of the duties of fund raising. Now candidates have to spend all their time fund raising because they have to raise money in $1,000 to $5,000 increments. The 1974 reform law has made them much more dependent on fund raising.

There's another kind of outsider campaign we should remember, too—the type Jim Buckley ran for the U.S. Senate in 1970 as the Conservative Party candidate. He was able to win in large part because of true grassroots support that was not stifled by regulation. People all around the state would just start reproducing Buckley for Senate campaign literature, which would now count as a contribution to the campaign. People held coffees in their houses and passed the hat. If you do that today, you run afoul of cash contribution limits, anonymous contribution limits, and reporting rules. The laws restrict the ability of the outsider campaign to raise money. They also make insider politicians themselves spend more time fund raising.

REASON: Explain why you think money is speech.

Smith: Let's suppose that the government—and I do hate to give it ideas—says that there are all these church buildings that are sitting around empty during the week and taking up prime space. So it says, "You can practice all the religion you want, but you can't build any more churches." Or it says, "We'll limit how much you can give to your church to $25,000." I think everybody would immediately say that has First Amendment implications. Of course we would.

To drive a little closer to home: Let's say Republicans don't like the way *The New York Times* has been attacking them. "We won't limit their speech," the good legislators declare, "but we will say you can't spend more than $1,000 a day or $25,000 a year to publish." Of course that would limit the paper's speech.

I think in a basic sense, everybody recognizes that spending money is intimately a part of the speech process and that if you limit expenditure, you limit speech. That is what the Supreme Court recognized in *Buckley*. The only question, then, is whether there's a compelling enough government interest to allow you to regulate speech in this circumstance. When you think about it seriously, there's no one who questions that if you limit spending you limit speech and that the First Amendment is involved.

REASON: What's the ideal system of campaign finance regulation?

Smith: The ideal system is the system we had that elected Abraham Lincoln and Grover Cleveland, which is no regulation. Or the system that elected both Roosevelts, Truman, Eisenhower, and Kennedy, which is a system that had virtually no regulation. The First Amendment is there precisely to keep government out of the business of deciding who is engaged in "real" issue advocacy and who is engaged in "sham" issue advocacy, and to keep government from deciding who has too much influence and who has too little influence. That's exactly why we have a First Amendment, so bureaucrats like myself are not making those decisions.

What We Know About Ecstasy

What is Ecstasy?

Ecstasy, MDMA,[1] is a semi-synthetic drug patented by Merck Pharmaceutical Company in 1914 and abandoned for 60 years. In the late 1970s and early 1980s psychiatrists and psychotherapists in the US used it to facilitate psychotherapy.[2] In 1985 its growing recreational use caused the DEA to criminalize it.

Ecstasy's effects last 3 to 6 hours. It is a mood elevator that produces feelings of empathy, openness and well-being. People who take it at all night "rave" dances say they enjoy dancing and feeling close to others. It does not produce violence or physical addiction.[3]

What are the greatest risks from Ecstasy?

Death is a possibility when using MDMA. According to coroner reports, there were nine Ecstasy-related deaths (three of these involved Ecstasy alone) in 1998.[4] Some of these deaths are related to overheating. MDMA slightly raises body temperature. This is potentially lethal in hot environments where there is vigorous dancing and the lack of adequate fluid replacement.[5] Many of these tragic deaths were preventable with simple harm reduction techniques such as having free water available and rooms where people can rest and relax.

One of the recent risks associated with Ecstasy is the possibility of obtaining adulterated drugs that may be more toxic than MDMA. Some of the reported deaths attributed to Ecstasy are likely caused by other, more dangerous drugs.[6] Deaths from adulterated drugs are another consequence of a zero tolerance approach. While we do not encourage Ecstasy use, we recommend that the drug be tested for purity to minimize the risk from adulterated drugs by those who consume it.[7] However, MDMA itself has risks. For example, it raises blood pressure and heart rate. Persons with known cardiovascular or heart disease should not take MDMA.

Recent studies have indicated that individuals who have used MDMA may have decreased performance in memory tests compared to nonusers. These studies are presently controversial because they involved people who used a variety of other drugs. Furthermore, it is difficult to rule out possible pre-existing differences between research subjects and controls.[8]

What is a rave?

Raves are all-night dance parties popular with young people that feature electronic music. A variety of drug use, from alcohol to nicotine, and including ecstasy, occurs at raves. Hysteria is leading to criminalization of raves, thus pushing them underground and into less safe and responsible settings.

Let's deal with legal and illegal drugs knowledgeably, understand their relative dangers, act prudently and avoid hysteria.

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Why the Digital Millennium Copyright Act hurts the public interest

By Mike Godwin

There's a war going on over the state of copyright law in this country, but it's a war whose battles are largely being fought covertly. On the occasions when the conflicts are made public, they have not been recognized for what they signify. What has gone mostly unseen and unremarked upon is the effort by industries who benefit from copyright law to shift the balance of the law forever in their favor, and away from the public interest that, according to Article I of the U.S. Constitution, is supposed to be the beneficiary of copyrights. (The Constitution expressly says that copyright and patent laws are designed "to promote the Progress of Science and useful Arts.")

In *Digital Copyright*, Wayne State University law professor Jessica Litman has set out to chronicle that war, and her book is as refreshing in its passion and polemical nature as most law-review articles on the subject are mind-numbingly tedious. Try to talk to any normal American about how this country's copyright law has gone off the rails, and you'll likely witness a new speed record for how quickly his eyes glaze over. That's why, when I want to communicate the horror of modern copyright law, I use the example of horror writer Stephen King, who (at least in theory) is a potential victim of the current state of the law.

Last year, King decided to experiment with online distribution of his fiction. His first experiment involved a novella called *Riding the Bullet*, which Simon & Schuster distributed in formats that could be read only on Intel-based PCs running the Windows operating system. This troubled King a bit because he (like me) is a devoted Macintosh user. King told reporters at the time that as a dedicated and long-term Mac user he was "surprised and a little unhappy at how hard it is for Mac users to access the story." Even in its Wintel versions, there were limits on users' access.

Digital Copyright: Protecting Intellectual Property on the Internet, by Jessica Litman, Buffalo: Prometheus Books, 225 pages, $25

Someone reading it through Glassbooks' or Netlibrary's proprietary e-book technology—as required by the official downloadable versions—was prevented from copying any of the text or from printing it out. Simon & Schuster explained that it disabled the reader software's printing and copying functions to prevent piracy.

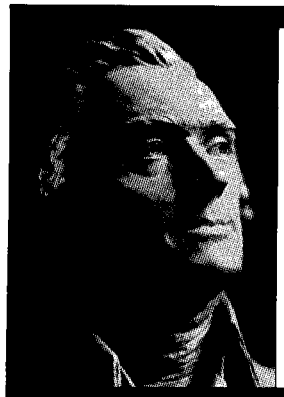
This odd state of affairs—a book offered in electronic format that cannot be easily read on the author's own computer—gives rise, when looked at in the context of current copyright law, to an interesting thought experiment. Suppose a Stephen King fan purchased a copy of the Wintel-based downloadable story and asked a friend to reverse-engineer a way of reading the story on his Macintosh computer. That bit of inventiveness might create a liability for the friend under the Digital Millennium Copyright Act. Or suppose that a King fan offered King himself a software tool that might enable the author to sidestep the e-book's encryption and extract the story for easy readability on the author's own PowerBook. That too is a violation of the DMCA, according to the reasoning of recent court decisions construing it.

One of Litman's purposes in *Digital Copyright* is to communicate precisely how the DMCA, with its draconian provisions and apparently unanticipated consequences, came to pass. Another purpose is to spell out the process by which copyright law is crafted in this country. (It turns out that Congress, by its own choice, tends to be only peripherally involved in drafting the law.) And still another is to explain the hugely deleterious public consequences of the shift in copyright law—a shift of which the DMCA is only one part.

The guts of that shift have to do, Litman explains, with a longstanding disagreement among copyright theorists as to what the underlying rights of copyright are and ought to be. According to one view, copyright interests are the product of a kind of bargain between the government and creators—a bargain that Congress, pursuant to the "copyright clause" of Article I of the U.S. Constitution, has the right to shape. Under that bargain, Litman writes, "Authors are given enough control to enable them to exploit their creations, while not so much that consumers and later authors are unable to benefit from the protected works."

But exactly what rights remain in the creators' control—or, as is most often the case, the publishers' control—is a matter of some controversy. The constitutional language itself is no unambiguous guide—it simply grants Congress the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings

BEN FISHMAN



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and Discoveries." But what does "exclusive Right" mean? And what does "limited Times" mean? Litman spells out the controversy: "Some people insist that copyright owners are entitled to just enough control to provide an economic incentive for their creation, since the broad purpose of copyright is to promote knowledge by encouraging authors to create and disseminate their works. Others argue that the only uses of a work that are properly excluded from the copyright owner's control are the ones that have no significant economic value."

It is the latter view that has come to dominate the shape of American copyright law in the course of the last quarter-century, and much of Litman's book explains how this happened. The fundamental explanation, according to Litman, is that Congress has essentially delegated the business of writing copyright law to the copyright industries, which have used technological advance as a rationale for expanding its protected interests under the law.

This was not always the case. "The first U.S. copyright statute," she reminds us, "gave authors exclusive rights to 'print, reprint, publish, or vend'—in other words, to control the reproduction and sale of copies." At its heart, that law concerned commercial copying and commercial distribution of creative works—a fairly limited set of government-created rights that did not address things like performances and recordings. For a while this was OK for (to take Litman's example) composers of popular music. Sure, under the then-current copyright law they had no copyright interests in performances, but performers had to buy the sheet music, so composers got their revenue indirectly. But technology changes things: "Once it became possible to record a musical performance on a piano roll or phonograph record and to make and sell hundreds of those, or to broadcast performances over the radio, however, composers could be excluded from the additional proceeds generated by the recording or broadcast....Thus, each technological advance inspired a dispute about whether it entitled copyright owners to expanded rights over their works."

That pattern in itself was neither remarkable nor particularly threatening to

the balance of rights then built into copyright law. But at the turn of the last century, Litman writes, "Congress got into the habit of revising copyright law by encouraging representatives of the industries affected by copyright to hash out among themselves what changes needed to be made and then present Congress with the text of appropriate legislation. By the 1920s, the process was sufficiently entrenched that whenever a member of Congress came up with a legislative proposal without going through the cumbersome prelegislative process of multiparty negotiation, the affected industries united to block the bill." What we have been left with, over the course of the last century, is industry-written legislation defining the terms of the copyright bargain—and the purported beneficiaries of that bargain, the public, have not been at the negotiating table.

As a result of this legislative pattern, which Litman documents in detail for each of the major revisions of American copyright law since 1909, the resulting legislative efforts have "predictable features." They expand copyright owners' rights, both by extending copyright interests expressly and by characterizing existing law in ways that have the effect of extending copyright interests. And they appease other groups that might otherwise be troubled by these extensions. They do this by crafting special exceptions—librarians are appeased by a special copying privilege for libraries (which requires a legislative definition of "library") and broadcasters are appeased with a special broadcaster privilege (which requires a legislative definition of "broadcaster"), and so on. The result is statutory law that expansively defines copyright holders' rights but is also riddled with special exceptions and definitions and provisions. As Litman writes, "The copyright law has gotten longer, more specific, and harder to understand."

And, perhaps more important, the increasing expansiveness of the copyright law has led to a shift in the theory *behind* the law. What began as a government-created monopoly established in the public interest has increasingly come to be understood, especially by the copyright industries, as a kind of natural right. Which means that copyright policy nowadays is discussed less in terms of where the rights interests should be split between creators and the public and more in terms of preserving creators' livelihoods, or their "fundamental" rights to their creations.

Added to this quasi-natural-rights approach to copyright has been anxiety about the Internet, which has been widely characterized (by yours truly, among others) as a global network of copying machines. Suddenly the threat to the copyright holder is not, primarily, competing commercial interests (although the drumbeat over the threat of commercial infringers never lets up in the policy arena). Instead, it's ordinary citizens, whose use of new technology to trade copies of copyrighted works—such as songs reduced to MP3 files—not only makes those works easier for foreign and domestic commercial infringers to find, copy, and sell, but also may have a commercial impact all by itself, as Internet users cease buying new CDs and other copyrighted products. (Whether Internet users have actually quit buying CDs and the like in significant numbers is a matter of hotly contested debate.)

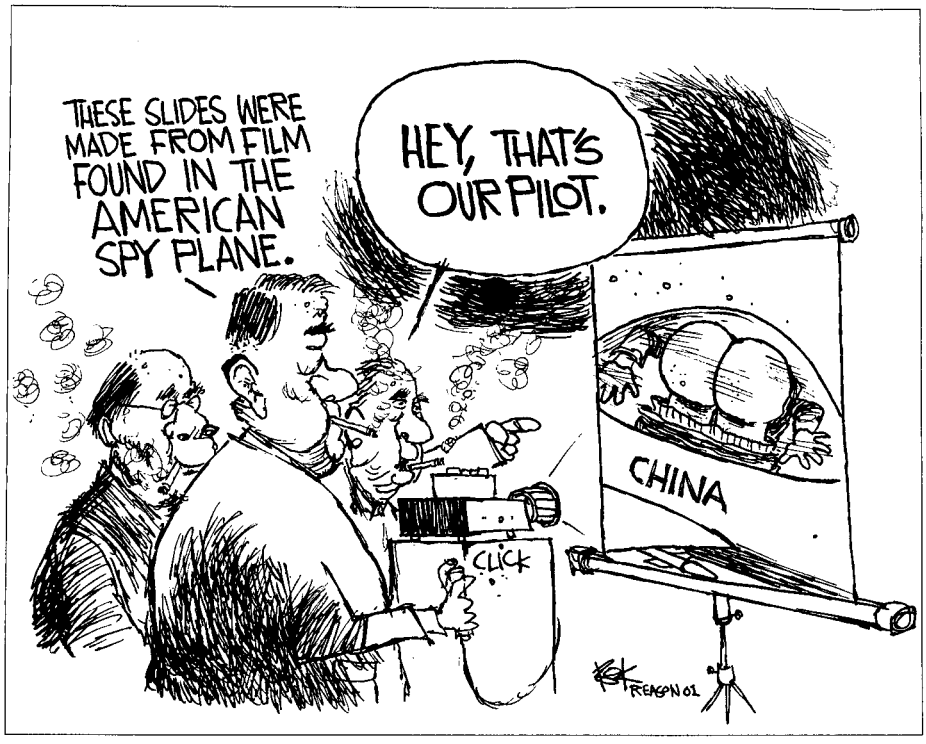
Increasingly, industry-written legislation defines the terms of the copyright bargain—and the purported beneficiaries of that bargain, the public, have not been at the negotiating table.

This panic led, by a somewhat circuitous path, to the Digital Millennium Copyright Act, whose provisions lead to anomalous results of the sort that might affect Stephen King's rights to read his own published works on his own computer. That path began in the early 1990s, when the incoming Clinton administration set out to shape policy for the "National Information Infrastructure," its new name for what had been termed, for a brief period at the beginning of the decade, "the information superhighway." Content policy was delegated, ultimately, to a working group on intellectual property that was chaired by Bruce Lehman, the newly appointed patent commissioner and a former copyright lawyer for the computer industry. Not surprisingly, his senior staff included former lobbyists for the copyright industries. After hearings that included testimony from major information-industry players, the working group came up with the "Green Paper"—a draft report on the state of copyright law that made recommendations for what it characterized as minor changes and clarifications in the law. "The minor changes it recommended, however, appeared to many interested observers to attempt a radical recalibration of the intellectual property balance," Litman writes.

At the core of that radical shift, Litman explains, was "the assertion that one reproduces a work every time one reads it into a computer's random-access memory." In fact, a few cases had held that such an event qualified as copying for copyright purposes, but the Green Paper treated this relatively new and controversial doctrine as if it were settled law. Those cases, transmuted by the Green Paper authors into dogma, may be the central cause of what Litman terms "the transition from an incentive model of copyright to a control model."

The Green Paper also set out to regulate transmission of a copyrighted work (e.g., across a computer network)—both because such transmission should be interpreted as a public performance or display (which was already included in the copyright holders' bundle of exclusive rights) and because, if it *weren't* counted as a copy, it would in effect be a "distribution," which meant that "first sale doctrine" would end copyright holders' interests. (The first sale doctrine is what makes it legal for you to sell your used paperbacks to a friend or to a used-book store without paying the copyright holder a dime—it's a policy that all but the copyright industries regard as a benefit to the public.)

Finally, the Green Paper endorsed the copyright holders' right to use copy-protection and access-control technology to



prevent unlicensed copying and use of their work. In addition, the paper called for new laws that would prohibit the circumvention of such technology and that would outlaw the creation or distribution of tools that could be used to circumvent it. The Green Paper authors could not make all unlicensed copying illegal—that would directly contradict the public policy that allows some unlicensed copying, such as "fair use" copying of copyrighted works for scholarship, education, or review. (I'm engaging in fair-use copying in this article by quoting Litman's book without asking her for a license to do so.) But if they couldn't make it illegal, they could make it (legally) impossible, at least in the digital sphere.

The Green Paper evolved into a "White Paper," whose characterization of current law was less disturbing rhetorically but no less radical. Writes Litman: "Using the tools that good lawyers use when engaged in such tasks, the White Paper carefully explained that just about every ambiguity one could imagine, properly understood, should under the best view of current law be resolved in favor of the copyright holder."

As a result, she writes, "That approach enabled the authors of the White Paper to come to conclusions that would strike anybody but a copyright lawyer as extravagant....Since any use of a computer to view, read, reread, hear, or otherwise experience a work in digital form would require reproducing that work in a computer's memory, and since the copyright statute gives the copyright holder exclusive control over reproductions, everybody would need either to have a statutory privilege or the copyright holder's permission to view, read, reread, hear, or otherwise experience a digital work, each time she did so."

Because these seemingly extravagant claims of right energized academics, librarians, and, perhaps most significantly, communications service providers (telephone and Internet service providers who might themselves be held liable for users' infringements under the White Paper's reading of the law), the reforms recommended in the White Paper stalled in Congress in 1996. But the ever-resourceful Bruce Lehman discovered a workaround by pitching a version of the White Paper to the World Intellectual Property Organization (WIPO), which was crafting a new copyright treaty. While most of the White Paper recommendations were either diluted or not adopted at all, the anti-circumvention recommendations made it, albeit in much more moderate form, into the final treaty.

And with the treaty language in hand, Lehman and the copyright interests were able to come back to Congress and ask for implementing legislation, lobbying for anti-circumvention language that was far more draconian than anything demanded by the treaty. The result of this effort was the Digital Millennium Copyright Act, which became U.S. law in 1998. Although the DMCA includes many provisions—notably safe-harbor provisions for service providers whose services are used by subscribers in infringing ways—its most controversial aspects were its anti-circumvention provisions. As Litman writes: "Lehman argued to Congress that other nations would not act to prevent piracy of United States works until the U.S. Congress demonstrated leadership by enacting tough anti-piracy laws, that, for example, made it illegal to defeat copy protection (or to market devices or services that do so) for any purpose whatsoever. Representatives of the motion picture and recording industries backed up the commissioner's arguments with prophecies of widespread international piracy unless Congress acted quickly. The world's eyes, they said, were on America."

And Congress did just that—it passed broad anti-circumvention provisions with narrow and not-entirely-clear exemptions. (Stephen King arguably has the right under the DMCA to write his own software to extract the text of *Riding the Bullet* for reading on his Mac—it's just that nobody can sell or give him a tool that does this for him.) The result was legislation that, as Litman writes, "is long, internally inconsistent, difficult even for copyright experts to parse and harder still to explain." Even worse, the law "seeks for the first time to impose liability on ordinary citizens for violation of provisions that they have no reason to suspect are part of the law, and to make noncommercial and noninfringing behavior illegal on the theory that it will help prevent [copyright] piracy."

Reading *Digital Copyright* is a little like reading Dante's *Inferno*—one follows the narrative with interest but also horror as things get worse and worse for the Constitution-created public interest that is supposed to be embodied in our copyright law. As in the *Inferno* there is no escape—

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the copyright process has been dominated by the copyright lobby for so long that it is difficult for Litman (or for this reader) to imagine anyone in Congress recapturing control of it. But Litman does see, in the very awfulness of the DMCA, the potential for redemption. Because the DMCA is, well, a crazy and contradictory set of laws that will increasingly be applied to individual citizens, one likely outcome is that citizens will simply opt to ignore it—to choose noncompliance. Plus, she writes, "The more burdensome the law makes it to obey its proscriptions, and the more draconian the penalties for failing, the more distasteful it will be to enforce." As a result of noncompliance and non-enforcement, the copyright lobby may be forced to revisit the DMCA and the Copyright Act in general. "Laws that people don't obey and that governments don't enforce are not much use to the interests that persuaded Congress to enact them."

Litman ends on the slightly hopeful note: "Even if copyright stakeholders refuse to give the public a seat at the bargaining table, they may discover that they need to behave as if they had." One can only hope that, if and when that turn of events comes about, policymakers are reminded that the public is the biggest stakeholder.

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Tomorrow Is Another Day in Court

The psychic stakes in the legal battle over *Gone With the Wind*

By Nick Gillespie

"I want the outer semblance of the things I used to know, the utter boredom of respectability ...the calm dignity life can have when it's lived by gentle folks, the genial grace of days that are gone....What is broken is broken—and I'd rather remember it as it was at its best."

That's Rhett Butler, speechifying during his final appearance in Margaret Mitchell's epic 1936 novel, *Gone With the Wind*. He's telling the book's resilient heroine, Scarlett O'Hara, that he simply can't bear to live in the Reconstruction-era South and that he's taking off, "perhaps to England—or to Paris." Post–Civil War Atlanta, explains Rhett, "is too new for me, too raw." (In the same scene, he also famously tells Scarlett that he doesn't "give a damn" about her affections.)

In pleading for a nostalgic, romantic, and delusional vision of the antebellum South, Rhett could have been the star witness in an ongoing legal battle that got underway this April in Atlanta. In a federal District Court there, the Mitchell Trusts, which owns the copyright to *Gone With the Wind*, successfully blocked the publication of Alice Randall's novel, *The Wind Done Gone*, arguing that the new book engaged in "blatant and wholesale theft" of Mitchell's fictional universe. *The Wind Done Gone* tells the story of *Gone With the Wind* from the perspective of Cynara, a mulatto ex-slave who is also Scarlett's unacknowledged half-sister.

It's virtually impossible that publishing Alice Randall's "theft" of *Gone With the Wind* could do anything but fatten the finances of Margaret Mitchell's estate.

The case raises a number of issues related to intellectual property, perhaps none more contentious and fascinating than this one: Is it possible to control characters and texts that have entered the public domain in fact, if not in law? In the end, though, the case is less about legal technicalities and more about dueling interpretations of the American experience with slavery.

The Wind Done Gone essentially flips the moral landscape of Mitchell's book by presenting whites as lazy and stupid and blacks as intelligent and hard-working. It also includes scenes of miscegenation (Rhett leaves Scarlett for Cynara) and gay and lesbian characters (Ashley Wilkes is finally outed) that are unimaginable, if deliciously latent, in the original. "I did not seek to exploit *Gone With the Wind*," the 41-year-old Randall, best known for writing the hit country song "XXX's and OOO's" for Trisha Yearwood, told *The New York Times*. "I wanted to explode it."

Although copyright law provides an exception for satire and parody, Judge Charles A. Pannell Jr. issued a preliminary injunction that keeps Houghton-Mifflin from publishing the book until the case is settled. Pannell ruled that Randall's novel veered into "piracy" and plagiarism by using more than a dozen barely altered characters from *Gone With the Wind*, and by incorporating too many scenes and too much dialogue from the original. The result, wrote Pannell in his decision, "removes the new work from the safe harbor of parody."

The Wind Done Gone, he said, "could serve as a market substitute for a sequel," which would reduce the Mitchell Trusts' "ability to continue to tell the love story of Scarlett and Rhett" and earn money from the original work and any official spin-offs.

Under current law, the Mitchell Trusts —which authorized a 1991 sequel, *Scarlett*, and reportedly has another one in the works—maintains control of *Gone With the Wind* until 2036. Houghton-Mifflin has appealed the injunction, and the next round of hearings is scheduled for late June.

The U.S. Constitution justifies copyright and patent law on essentially utilitarian grounds. Intellectual property, unlike real property, is explicitly a means to an

end (the betterment of society) and not an end in itself. By granting an exclusive monopoly on a work for a limited period, copyright is supposed to serve the common good by providing an incentive to "promote the Progress of Science and useful Arts." Following from that, the core of Pannell's ruling is the belief that *The Wind Done Gone* would hurt sales of *Gone With the Wind* and any related works directly authorized by the Mitchell Trusts.

That may not matter. In 1994, the U.S. Supreme Court ruled unanimously that "fair use" covers unauthorized parodies even when they do economic harm to the original. But it is highly dubious that *The Wind Done Gone* would hurt the Mitchell Trusts' bottom line.

Literature is awash with examples of works that retell well-known tales from the perspective of new characters. Thus *Grendel*, John Gardner's 1971 retelling of *Beowulf*; *The True Adventures of Huckleberry Finn*, John Seelye's 1970 revision of the Twain classic; and *Foe*, J.M Coetzee's 1986 reshaping of *Robinson Crusoe*. Perhaps the most critically and commercially successful example of this in the past half-century is Jean Rhys' 1966 novel, *Wide Sargasso Sea*, which depicts a young Bertha Mason before she becomes Rochester's mysterious, crazed Creole wife in *Jane Eyre*.

One might also throw into this mix less lofty material, including fan-generated *Star Trek* stories that imagine Kirk and Spock as lovers and over-the-top send-ups such as *Harvard Lampoon*'s *Bored of the Rings*, a popular late-'60s parody of J.R.R. Tolkein's famous fantasy cycle. (Houghton-Mifflin, which publishes Tolkein in the U.S., has itself never taken action against the book.)

None of these literary knock-offs, it is safe to say, has in any way weakened the audience or market for the works that inspired them. If anything, they have greatly expanded interest in the originals. On its page for *Bored of the Rings*, for instance, Amazon.com notes that "customers who bought this book also bought" *The Lord of the Rings, The Complete Guide to Middle-Earth*, and other Tolkein-related titles. *Wide Sargasso Sea*, a campus favorite for over a decade, is now routinely taught in conjunction with *Jane Eyre*, and has put Charlotte Bronte's mid-19th century novel smack at the center of contemporary academic debates over feminism and post-colonialism.

Similarly, if *The Wind Done Gone* sees print, the likely outcome will be a burst of new interest in *Gone With the Wind* (already one of the very best-selling books in history). It's hard to imagine the bookstore that won't create displays prominently featuring both books and a host of related titles. College professors who might otherwise be skittish about *Gone With the Wind*'s racial politics will likely assign both books as a way of discussing race relations, American history, and literary studies. It's virtually impossible that publishing Randall's "theft" of *Gone With the Wind* could do anything but fatten the finances of the Mitchell estate.

That said, Randall's novel would indeed steal something from the text that inspired it. The very idea behind *The Wind Done Gone* inflicts a sort of psychic damage to what Judge Pannell characterized in his decision as the "romantic, but tragic, world" of Twelve Oaks and Tara. By re-imagining *Gone With the Wind* through a slave's eyes, *The Wind Done Gone* would help strip away whatever sympathy for Rhett Butler's South still exists in some readers; it would make it that much more difficult to obfuscate the brutality of a society predicated upon slavery with phrases such as the "calm dignity life can have when it's lived by gentle folks" and "the genial grace of days that are gone." Or, for that matter, by claiming the novel unfolds in a "romantic, but tragic, world."

In other words, even as it might prompt more readers to turn their attention to *Gone With the Wind*, *The Wind Done Gone* has the potential to significantly change *how* they understand and appreciate Margaret Mitchell's novel. To be sure, this revisionary process has been underway since the book's appearance as a product of the Southern cultural revival of the 1920s and '30s. Certainly, in the wake of desegregation, the Civil Rights era, and a keener appreciation for the legacy of institutionalized and state-sponsored racism, *Gone With the Wind* has been read by most Americans on vastly different grounds than it must have been in its first few decades. Today, even as we can appreciate the text's odd and undeniable ability to affect

us—the left-leaning literary critic Leslie Fiedler once admitted the book moved him to tears every time he read it—we are repulsed by the world it describes and the values it articulates.

In a deep sense, the copyright drama playing out in Atlanta—the City Too Busy to Hate—is really about how *Gone With the Wind* should be read 65 years after its publication and 136 years after the society it romances surrendered at Appomattox Courthouse.

In this latest episode, the Mitchell Trusts is cast in the role of Rhett Butler, turning away from the new and the "raw," even though—or perhaps because—it represents the best chance for a robust, vital future. The Trusts may ultimately prevail in court, but it would do well to remember that it is Scarlett who is the hero of *Gone With the Wind.* She alone—at least among the novel's white characters—recognizes that "tomorrow is another day" and is thus able to flourish in post–Civil War America.

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Tales of a Gen X Swinger

A music critic's juvenile cultural politics

By Jesse Walker

If adolescence is the discovery that every tradition, every habit, every quirk of your upbringing is arbitrary, absurd, and quite possibly dispensable, then adulthood is the recognition that the same is true of every alternative you've tried since adolescence. There may be a time, early in your life, when it feels right to adopt wholesale the likes and dislikes of a narrow cultural movement. But it's hard—for some of us, anyway—to let some dogma about what you "should" like stand in the way of your actual tastes. And so, eventually, you move on—perhaps to another semi-cult, and perhaps, eventually, to a more mature eclecticism: the kind that isn't so uptight about arbitrariness, absurdity, and dispensability.

In this way, the swing revival of the '90s—like the roughly simultaneous revivals of rockabilly, traditional country-western, and martini-flavored lounge music—emerged from the world of punk. If you're suspicious of the mass media and devoted to do-it-yourself culture, there are few better ways to express this than to ignore the officially designated alternatives to the mainstream and instead fashion your own subculture out of whatever pop detritus you can lay your hands on. If you like Benny Goodman, then dammit, you listen to Benny Goodman, even if you also like Hüsker Dü. The affection comes first; the category comes second.

Today, of course, the swing revival

If It Ain't Got That Swing: The Rebirth of Grown-Up Culture, by Mark Gauvreau Judge, Dallas: Spence Publishing, 122 pages, $22.95

(which actually owes more to jump blues, a '40s genre that emerged in part from swing) includes thousands of people with no interest at all in punk rock or the punk subculture. People listen or dance to the music for hundreds of not-always-consistent reasons, just as other people—sometimes the same people—have hundreds of reasons for listening to rap, listening to bluegrass, or playing football. To explain a subculture, one must do more than trace its genealogy.

But it's worth noting that the conservative critic Mark Gauvreau Judge, author of *If It Ain't Got That Swing: The Rebirth of Grown-Up Culture,* gets the genealogy of neo-swing wrong, and that he does so precisely because he's trying to reduce a complex phenomenon to a simple explanation. The swing revival, he tells us, began on April 21, 1998, with a Gap ad filled with young men and women dancing the Lindy Hop. He then allows that, "In a way, the swing tsunami wasn't completely unexpected," citing the 1996 film *Swingers* as a precursor. (In fact, the swing content in *Swingers* was close to zero, even if it did depict in passing some swing dancing—which, Judge tells us, "was enjoying a small underground rebirth in Los Angeles at the time.") And "there were a few people who had been swinging before *Swingers*"—including, as it happens, Mark Gauvreau Judge, who took up the pastime in the D.C. area in 1995 (if you believe this book) or 1993 (if you believe a piece he wrote for *Jitterbuzz.com*).

Why the different years? I suspect it's because, when he wrote the *Jitterbuzz* piece, Judge's most recent book was his memoir of youthful alcoholism, *Wasted: Tales of a Gen X Drunk.* It thus made narrative sense to make his first dance a step on his ascent to sobriety. ("When I arrived for the dance, I was terrified. For the past ten years alcohol had been my crutch in social situations.") But in the new version of the story, Judge is making a political argument, not offering a personal confession. It's therefore more convenient to have the dance take place "not long after I discovered Christopher Lasch," the social critic who prompted Judge's disillusionment with the left.

Either way, the "small underground rebirth" of swing obviously predated both the Gap ad and *Swingers,* and it clearly cast its net far beyond L.A. I can assure Judge that it was also present in Seattle in the mid-'90s, and anecdotal evidence—i.e., the testimony of far-flung friends—reveals that it existed in several other cities as well. The Gap ad brought the swing scene to the attention of the mass media, and the subsequent press attention (and the ad itself) helped spread it. But the revival was both underway and widespread long before *Entertainment Weekly* took notice of it, and it continues now, even though its moment in the media eye seems to have passed.

Why make a big deal about Judge's distorted chronology? Because Judge is not merely celebrating swing for its own sake; he's trying to make a larger point about the state of society. America, he complains, has been losing its "third places"—sociologist Ray Oldenburg's term for pubs, barber

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shops, and other spots outside both home and work where members of the community can informally gather. In the original swing age, Judge notes, such places were common; in particular, they dominated the Shaw neighborhood of Washington, D.C., a once-thriving black district that was gradually eviscerated (and is now, though Judge doesn't mention it, enjoying something of a comeback). Today's swing clubs, he argues, mark the return of such places. Before they came along, it looked like "suburban kids would be trapped in a world without community, fun, adventure, romance. Stuck in a placeless place,

If It Ain't Got That Swing replaces actual history with a Hollywood Minute account centered around the film _Swingers_ and an ad for the Gap.

they would be left to soak up the sewage coming through cable, on records, and in video games." The Gap ad rescued us: "There would have been no hope at all if a cultural counterrevolution hadn't taken place in April 1998."

But Judge has simply made a fetish of one kind of third place (and one cultural style) and ignored or attacked the other ways and places in which people choose to interact. The devotees of punk, hip hop, and folk, among other kinds of music, have also been meeting in such informal gathering-spots. It was from one of those little subcultures, after all, that the swing revival emerged.

So Judge prefers swing to rock. Indeed, he's a convert to the former from the latter—"a radical leftist, steeped in...the rock'n'roll nihilism of the 1990s," who became a jitterbugging neocon. But many people enjoy both forms of music, and even both forms of social interaction. Judge likes the communitarian values he associates with the '40s and dislikes the antinomianism he associates with the '60s.

But others might actually admire elements of both periods, even when they contradict each other, and adopt one style or the other according to mood—or even casually fuse them, leaving it to others to work out the paradoxes.

Judge's critique, by contrast, has no room for paradox, and that is why it replaces actual history with a Hollywood Minute account centered around *Swingers* and the Gap. His political comments are similarly averse to nuance. For instance, he faults Marion Barry (in his premayoral incarnation as a civil rights leader in D.C.) for being soft on the violent wing of the movement, blaming him indirectly for riots that contributed to the decay of Shaw. But even if one buys that rather dubious charge, the story isn't so tidy. Barry was also active in the fight that kept the feds from shoving a freeway through Washington, saving some of the city's most vibrant third places from a plan that would have wiped them out. That doesn't make the man a hero, but it does add a few new wrinkles to Judge's simple tale of a city's fall from grace.

Enough about the cultural context of swing. What does Judge have to say about the music? Surprisingly, very little: He mentions only a few neo-swing bands, and offers little critical commentary about their work, probably because it would be difficult to force such a discussion into an ideological straightjacket.

To my ears, most neo-swing music, while enjoyable on its own terms, is vastly inferior to the original hot jazz, swing, and jump blues that it emulates. Few of the new musicians offer either the innovation or the craft of their forebears, and the most notable exceptions aren't mentioned in the book: If Judge has a taste for the Hot Club of Cowtown's fusion of folk, hot jazz, and western swing, or the Squirrel Nut Zippers' clever forays into '20s Americana, or Andrew Bird's dark lyrics, brilliant fiddling, and eclectic musical styles, he fails to mention it. He does make a few exaggerated swipes at rock, allowing that the Beatles were "brilliant musicians" but attacking the Velvet Underground as "insipid" and the early Rolling Stones as "a third-rate blues cover band." But Judge's chief complaints about rock are not musical but cultural: He targets the rock age for its embrace of transgression and irony (a word he consistently misuses—he seems to think it's a synonym for "smug aloofness").

I have no interest in standing up for transgression-by-numbers, nor for the self-satisfaction often found in the rock establishment. But Judge's critique seems aimed less at the typical rocker than at his younger self, a *soi-disant* rebel who "believed that America was a country club filled with bigoted neanderthals pushing an atavistic cultural agenda." Those days are behind him, he tells us—but I'm not so sure. This is the man, after all, who writes that America has a "toxic culture," that it is riven by "the alienation of neighbors and generations," that its children are so stupefied that their lives would be hopeless were it not for the divine intervention of a Gap ad. This seems no less categorical and elitist than the views Judge attributes to his younger incarnation.

And that brings us back to adolescence and adulthood. In *Wasted*, Judge tells us that he was, in his boozy days, a devoted fan of punk rock. Now he's shifted his loyalties with the fervor of a man born again—and, narcissistically, he expects all right-thinking readers to do the same. His new book's subtitle may invoke "grown-up culture," but his prose betrays him: He writes like he's going through a stage. ◆

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What Do Women Want?

Feminism seeks new adherents—and old goals

By Cathy Young

The heated feminist debates of the early 1990s seem to have simmered down, but the flow of books about the future of women and feminism continues unabated. 1999 was a vintage year for conservative homilies such as Wendy Shalit's *A Return to Modesty* and Danielle Crittenden's *What Our Mothers Didn't Tell Us*, both of which argued that the quest for equality had gone too far and urged women to rediscover traditional values. By contrast, the last months of 2000 saw a crop of books proclaiming that feminism has not gone far enough and urging women to complete the revolution. But how to fight, and for what? The new feminist-revival books—*Flux: Women on Sex, Work, Love, Kids, and Life in a Half-Changed World* by Peggy Orenstein, *Sex & Power* by Susan Estrich, and *Manifesta: Young Women, Feminism, and the Future* by Jennifer Baumgardner and Amy Richards—may raise more questions than they answer.

Manifesta tackles an issue that has perplexed feminists for some time: defining a feminism that would speak for, and to, the women of post–baby boom generations. The 30-year-old authors, who met while working at *Ms.* magazine, bristle at claims that young women are indifferent or hostile to feminism. Any woman born in America in the past 35 years, they assert, has grown up feminist, taking it for granted that "girls can do anything boys can" (which is largely true, though surely not in every pocket of American life). "For our generation, feminism is like fluoride," Baumgardner and Richards write, in a

Manifesta: Young Women, Feminism, and the Future, by Jennifer Baumgardner and Amy Richards, New York: Farrar, Straus and Giroux, 416 pages, $15

Sex & Power, by Susan Estrich, New York: Penguin Putnam/Riverhead, 287 pages, $24.95

Flux: Women on Sex, Work, Love, Kids, and Life in a Half-Changed World, by Peggy Orenstein, New York: Doubleday, 325 pages, $25

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D.C. Jewels

The closing of a historic shop is a triumph of meaning over means

By Charles Paul Freund

Abraham Lincoln's family never did pay off the balance he owed Galt & Bro. Jewelers the night he was shot; the Galt family took back some of the items the president had purchased for his wife, and forgave the rest of the debt. Nor, a century later, did Lyndon Johnson's White House pick up the plaque Galt's made for a gift that John F. Kennedy was to have given the Sultan of Zanzibar in December 1963. Kennedy of course died before he could make the presentation, and the plaque was still in Galt's vault, along with records of purchases made by Jefferson Davis and Ulysses S. Grant, when the 199-year-old Washington store finally closed earlier this year.

According to its owners, last year was Galt's most profitable ever. So why did the business close? Because its owners decided that if the store could not continue to live within the identity created by generations of customers and managers, then it would be better simply to honor that long tradition by quietly shutting the door. The decision meant foregoing the certain and handsome profit that would have come from selling a two-century accumulation of illustrious good will. It is a striking act of creative destruction.

Galt's remained, from beginning to end, a privately held company, and the details of its finances cannot be independently verified. Even so, this last story of its closing is a fitting cap to generations of remarkable stories in which it has played a role. The last owner to have borne the name Galt, for example, was Mrs. Edith Galt, who became the second wife of Woodrow Wilson.

In fact, she was rumored to have fulfilled the president's role herself after Wilson's catastrophic 1919 stroke; she later admitted "stewardship" of the office. (She also figures in the most famous newspaper typo in D.C. history. During Wilson's courtship of Mrs. Galt, *The Washington Post* noted that the president was seen with her at the theater. Intending to report that Wilson had been "entertaining" Mrs. Galt in a loge at the National, early editions instead printed that he was seen "entering" her there.)

In any event, Galt's last president, Edward Hall, is 70; the firm's vice president, J. Montague Hatcher, is 71. Both men had long been looking forward to retirement and put Galt's up for sale. But the only likely purchasers, in the end, reportedly were national chain jewelers, and the prospect of the Galt identity being subsumed into a chain made them uneasy. "We don't want to see Galt's become a chain operation of poor quality and poor service," Hall told the *Post* in November.

The sentiment may smack of carriage-trade snobbism, but the story is more complicated and more interesting than that. Hall's views come not from pride of class, but from pride of achievement, his own and his predecessors'. As Hall told the *Post*, he joined the store's staff in 1952, a Navy veteran looking for work; he found it fixing watches as a Galt's apprentice. Having participated in the long Galt narrative for half a century himself, he ended—as president—by seeing himself and his colleagues as that narrative's stewards. For Hall and the others, closing the store and surrendering the potential sales profit was a final way to honor an institutional identity of which they were caretakers.

In short, Galt's had not only history, but accumulated meaning as well. Of course, the issue of commercially derived meaning in market societies is an extremely contentious one. Advertising and consumerism revolve around frequent commercial assertions of "brand"

identity, claims that try to lure buyers by offering them products with purported meaning. Critics regard the whole enterprise as shallow, evanescent, wasteful, and noisy. But in fact the system works as well as it does because buyers are clearly interested in participating in the meaning trade. They use what they find there to fashion and refashion themselves throughout the various stages in their lives.

But the meaning that seems most important to people is not one contained in an ad campaign; it is the meaning that they have helped construct through their own participation. That is why there is often an outpouring of popular regret,

The meaning that seems most important to people is not one contained in an ad campaign. It is the meaning that they have helped construct through their own participation.

and sometimes even anger, at the closing of such commercial enterprises as old movie theaters, neighborhood bars, small bookstores, night clubs, and specialty shops—or at the transfer of professional sports franchises. The character imputed by people to such businesses derives from having participated in the making or survival of their meanings. Commercial meaning implies an investment of self.

Galt & Bro. Jewelers, established 1802, Washington's oldest private business, determined that its survival would be at the cost of its meaning, and so it closed. With it went a dimension of the city's—and the nation's—history as well. Such places are built on the desire of generations, and their now-closed ledgers house an unwritten—and unwritable—history of us all.

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"IF WE ALLOW HEMISPHERE-WIDE FREE TRADE, ALL OF MICHIGAN'S JOBS WILL GET EXPORTED TO ALABAMA!"

HENRY PAYNE

striking and insightful analogy. "We scarcely notice that we have it—it's simply in the water."

They want to integrate an essentially personal feminism into a political one and reconnect young women to the women's movement: "We need to transform our confidence into a plan for actually attaining women's equality." In their view, young "Third Wave" feminists need to respect the gains won by the "Second Wave" in the 1960s and '70s, but the elders must also let the young women define "a feminism of their own."

What does that mean? Well, for one, it affirms female sexuality in all its forms, be it heterosexual monogamy, bisexuality, S&M, or the sexual self-display condemned as exploitative by many Second Wavers (who shuddered at the sight of Madonna in her pre-mommy days or the bra-brandishing "soccer babe" Brandi Chastain). The *Manifesta* version of Third Wave feminism also happily accepts lipstick, sexy clothing, and high heels, blending female empowerment and "pink-packaged femininity" into a style Baumgardner and Richards call "Girlie"—which encompasses the Spice Girls, women's soccer, the Barbie doll, and *Buffy the Vampire Slayer.*

The duo's chirpy enthusiasm for pop-culture icons and artifacts from Courtney Love to Victoria's Secret lingerie to *Xena: Warrior Princess* can be tiresome, and their writing all too often confirms the very stereotypes of young feminists that they seek to disprove—namely, silliness and self-absorption. And yet their irreverent young feminism has its appealing aspects.

In one chapter, the authors challenge the still-common notion of epidemic low self-esteem among girls and the portrayal of girls as "victims of society...whether or not they themselves feel this way." They astutely note that the "girl empowerment" movement often serves less the needs of girls than those of adult activists. They have the temerity to make fun of menstruation-celebrating rituals, and they boldly set out to reclaim the word "girl" in reference to grown women—as "the female analogue to 'guy.'"

More important, Baumgardner and Richards take an unabashed delight in the vast array of choices American women enjoy today, in matters as serious as childbearing and as frivolous as nail polish. Unlike the prissy Susan Faludi (author of *Backlash: The Undeclared War Against American Women* and *Stiffed: The Betrayal of the American Male*), they do not turn up their noses at consumer culture. Instead, they see it as a source of pleasure, and an arena where women freely exercise their preferences. Third Wave feminism is, they assert, all about choice. You can be "a stay-at-home mom, a big Hollywood producer,

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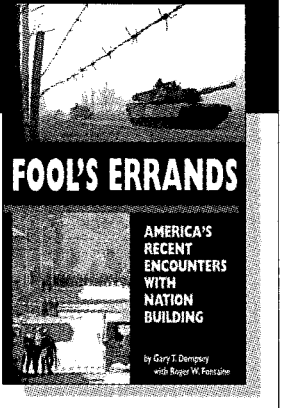

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a beautiful bride all in white," or "a female cadet at the Citadel." No problem: "In reality, feminism wants you to be whoever you are—but with a political consciousness."

And there's the rub: When it comes to sexual orientation, occupation, and lifestyle, the more choice the better. But when it comes to politics, the authors' respect for diversity evaporates. Baumgardner and Richards never so much as try, as Naomi Wolf half-heartedly did in her 1993 book *Fire With Fire*, to transcend feminism's allegiance to the left. You're allowed to wear garter belts and wax your legs, but don't you dare support school vouchers or Social Security privatization. "Right-wing" women—a category into which the authors lump not only moderate, pro-choice conservatives such as Christina Hoff Sommers but libertarians such as REASON Editor-at-Large Virginia Postrel—are simply caricatured as enemies of women's rights. Their arguments are never even briefly engaged.

When Baumgardner and Richards reveal their actual agenda, it's mostly boilerplate "feminist" causes: reproductive rights, equal pay for "comparable" work, violence against women, even a dusted-off Equal Rights Amendment. Some worthy issues they want the women's movement to tackle, such as draconian sentences for minor drug offenders, surely affect at least as many men as women.

At other times, *Manifesta* reduces complex issues to simple sloganeering. Welfare reform that steers mothers into the workforce and limits their time on the dole is denounced as anti-woman. The exclusion of women from certain military occupations is assumed to have no practical justification (even though many servicewomen disagree). If the courts give custody of a child to the father after rejecting the mother's accusations of sexual abuse, helping her abduct the child is treated as an unambiguously noble form of "activist volunteering." Baumgardner and Richards' statistics are as sloppy as their thinking. In their discussion of comparable worth, they assert that "accountants are usually male" and are paid more than usually female bookkeepers. In fact, by 1999, more than 58 percent of accountants in the

United States were women.

So underneath the hip exterior of *Manifesta* lurks, mostly, the same old rusty orthodoxy. The book concludes with the authors' vision of a feminist future—a sublimely ridiculous utopia in which the federal government not only subsidizes child care, abortion, and "environmentally sound menstrual products" but also regulates salaries at even the smallest companies to enforce comparable worth laws. In this wonderful world, mothers and fathers alike are required to take paid paternity leave, streets are safe for women at any time of the day or night (apparently, come the revolution, not only sex crimes but garden-variety muggings will disappear), and newscasters on television "come in all shapes and sizes."

The feminism of *Manifesta* excludes not only everyone who is not a socialist but everyone who deals with feminist issues in everyday life but has no interest in belonging to a movement. The underlying assumption here is that equality can and must be attained only through political activism. On some issues, such as abortion, political action is clearly appropriate and necessary, but the real barriers to women's full and equal participation in all spheres of society are of a kind the government can do very little to remedy.

These issues are tackled, in very different ways, in *Sex & Power* and *Flux*. If the Baumgardner-Richards universe is peopled by bohemian activists, journalists, and artists who ponder such questions as whether to call themselves "bisexual" or "omnisexual," Susan Estrich and Peggy Orenstein write about women with real-world jobs that they struggle to balance with their personal lives.

Neither Estrich, a feminist law professor and Democratic strategist, nor Orenstein, a journalist and author, downplay the existence of sex discrimination. (Estrich may even overplay it: She gives full credence to the 1999 MIT report that claimed to find subtle bias against women faculty, ignoring some persuasive critiques of that report.) Yet both clearly feel that at this point, institutional sex discrimination is not the worst obstacle to women's advancement.

It's not because of discrimination that, as Estrich notes, women who rise to high-level positions in business and the professions are much more likely than their male peers to have no children. And it's usually not because of discrimination that many women choose to leave the fast track or not to get on it in the first place.

"We take ourselves out of the running, decide that the prize isn't worth it, or that the 'mommy track' is good enough, better than killing ourselves...while a baby-sitter tends our children," Estrich ruefully observes.

Estrich makes the familiar complaint that the ostensibly gender-neutral rules of the workplace are actually designed for people without child-care responsibilities. Women, she asserts, could change the rules if they were willing to harness the power of sisterhood and use the clout they already have in politics and in business. Basically, what she proposes is a mommy track—flextime, telecommuting, job sharing, etc.—that would allow not only for merit-based career advancement but also for re-entry into the fast lane.

Sex & Power has some interesting ideas and insights, not only about work and motherhood but also about sexuality in the workplace. Its appeal, however, is limited by Estrich's almost exclusive concern with ushering more women into the highest strata of political and corporate power. She is convinced that this will benefit all women; indeed, she urges women to pursue such positions even if they'd rather do something else, because it would be selfish to forego the power they could use to help their sisters—a novel twist on feminine self-sacrifice. But those who do not automatically assume such a trickle-down effect, as Estrich does, are likely to be put off by her elitist focus.

A bigger problem is Estrich's evasion of the fact that the accommodations she advocates almost inevitably make women more expensive, less efficient employees. However family-friendly the workplace, as long as some people are willing to focus on work with single-minded devotion, they will likely achieve more (all else being equal) than someone who gives 50 percent.

One obvious solution is to make the division of domestic and parental responsibilities more equal. Estrich dismisses this idea as pie-in-the-sky, but Orenstein sees it as central to further change. Unlike Baumgardner and Richards, who assume that this goal can be achieved by fiat and by hectoring men into doing their share, Orenstein understands that women are part of the problem.

Manifesta never transcends feminism's allegiance to the left. You're allowed to wear garter belts and wax your legs, it says, but don't you dare support school vouchers or Social Security privatization.

"Men may have to do more, but women also have to let them," writes Orenstein, who interviewed over 200 women while writing *Flux*. Most women, she concludes, hold on to maternal control, both out of fear of being labeled a bad mother and out of reluctance to relinquish power. Even career-oriented young women who talk the good talk about shared parenting often quickly reveal that they don't expect and don't really want men to be equal partners in child rearing.

"I say I'm pissed off that the men aren't thinking about [balancing work and family], but the truth is, I don't imagine my husband...thinking about working part-time," admits a medical student. "I think of it as being my choice."

These semi-traditional expectations shape women's decisions long before they start shopping for maternity clothes. Many choose careers with lower pay (and often less prestige) but more flexibility. They also seek mates who are "husband material" in the most unreconstructed sense. One young woman interviewed by Orenstein rejects her devoted boyfriend in part, she sheepishly admits, because of his "limited earning potential" as an art director. Abbey, a sales rep for a comic book publisher, is strongly attached to her identity as a professional woman, yet deep down she wants the option of not working when she

has kids—an option she is nearly certain she won't exercise.

Is there anything wrong with this semi-traditionalism, if that's what people want? Orenstein makes a strong case that the crazy quilt of old and new norms often leaves women painfully conflicted and guilt-ridden, and contributes to marital tensions. While she wants businesses to make it easier for both sexes to lead balanced lives, she stresses that "there are decisions we [women] can make more consciously...consequences we can understand more fully as we assemble the pieces of our professional and personal dreams."

Orenstein makes her subjects come alive on the page. The material she includes about her own struggles with her biological clock (complicated by illness) is emotional without being narcissistic. Still, her vision is not free of politically correct blinkers. She is too eager to interpret most young women's negative reaction to the thought of being single at age 40 as culturally dictated, rather than motivated by a genuinely felt desire for family. And she gives zero consideration to the ways in which choices may be influenced by nature as well as culture.

Take one couple featured in *Flux*, Brian and Carrie. After having a baby, Brian took extended parental leave—but he felt bored and isolated at home, while Carrie started to feel she was missing too much by being at work. So, even though she earned more and loved her work more, Brian returned to his job and she quit hers.

Can one, as Orenstein seems to do, rule out at least the possibility that the failure of this role reversal was caused not only by "the tug of tradition" but by the tug of deeper needs? It's not that gender is destiny, or that mothers are universally "hard-wired" to be better suited for child rearing than fathers. But, quite possibly, more women than men are so predisposed and would make such a choice even without cultural pressures.

On the other hand, Orenstein offers a valid counterpoint to those who focus solely on biological sex differences and discount cultural pressures. She is right to ask if things might have turned out differently if Brian hadn't been bombarded with signals that he was expected to work, and Carrie hadn't been struggling with the credo that a good mother doesn't let someone else care for her child.

So what next? It is highly doubtful that we will see a re-energized mass feminist movement, whether based on the youth activist model embraced by Baumgardner and Richards or the Old Girl Network model embraced by Estrich. A discussion of sex roles and male-female relations in our culture will undoubtedly continue; but, to be of any use, this discussion has to include men.

Of the three books, only *Flux* makes any serious effort to do so. (Estrich is far more concerned with sisterhood than she is about the connections between men and women.) Orenstein is candid about the fact that in our "half-changed world," men have disadvantages of their own—such as less freedom to choose a fulfilling but not very lucrative vocation. Still, her primary focus is obviously on women. We learn little of what young men think about their family roles, the cultural expectations they face, or their relationships with women. Male voices could have helped put the women's struggles in much fuller perspective.

Barring some major social disruption, men and women will likely continue to muddle through on the way to a more equal world. It will be a much easier ride if we realize that this journey is far more personal than it is political—and that men and women are making the trip in the same boat. ◆

Contributing Editor Cathy Young (CathyYoung2@cs.com) is the author of Ceasefire!: Why Men and Women Must Join Forces to Achieve True Equality *(The Free Press).*

Literary Legislators

In praise of partisan writers

By Michael Young

Christopher Hitchens' recently published indictment of Henry Kissinger rather too quickly overshadowed his *Unacknowledged Legislation: Writers in the Public Sphere*, a collection of literary essays produced over the past eight years. This was ironic, if only because Hitchens has so often mocked the former secretary of state's propensity for attracting publicity. Hitchens has sought, like George Orwell, to turn political writing into an art, his starting point being "a feeling of partisanship, a sense of injustice." In *Unacknowledged Legislation*, however, his aim is primarily to reveal the politics in literature.

Three things stand out when reading Hitchens' essays. The first is his attitude toward public intellectuals, the "unacknowledged legislators" of Shelley's *In Defense of Poetry*. Hitchens also invites reflection on the ecumenism of literature—good literature—that seems to water down the "feeling of partisanship" that so pervades his writings. There is, finally, something to be said of the Hitchens style, which can be characterized as relentless provocation—though within disciplined boundaries—and bold willingness to attack others on their own terrain.

Unacknowledged Legislation: Writers in the Public Sphere, by Christopher Hitchens, London: Verso, 358 pages, $25

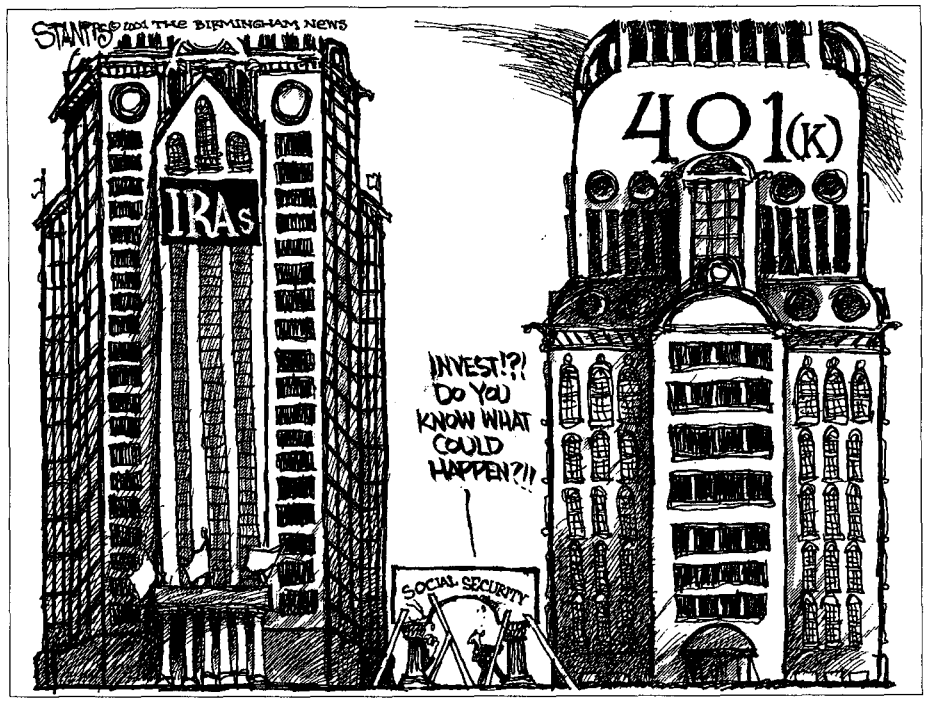
For Hitchens' insights into the duties of public intellectuals, turn to a forum on the subject that ran in the February 12 edition of *The Nation*. There Hitchens stated: "I've increasingly become convinced that in order to be any kind of a public-intellectual commentator or combatant, one has to be unafraid of the charges of elitism. One has to have, actually, more and more contempt for public opinion and for the way in which it's constructed and aggregated, and polled and played back and manufactured and manipulated."

In an essay on H.L. Mencken titled "Critic of the Booboisie," Hitchens goes further, arguing: "Populism, which is in the last instance always an illiberal style, may come tricked out as folkish emancipation." Hitchens cites Murray Kempton and Gore Vidal as examples of "radical critics," a more partisan characterization than "public-intellectual commentator or combatant."

The reference to Vidal, in particular, is revealing. Hitchens' respect for Vidal runs deep and the two share several similarities (beyond the fact that they call Washington, D.C., their "hometown "). Though considered luminaries of the left, both have mostly classical bearings, and are more comfortable with the game of ideas and the attractions of style than with the dictates of ideology—an ideology of both left and right that tends to exalt "the public." As *Unacknowledged Legislation* continually makes clear, Hitchens has a rather quaint notion that the public intellectual represents a vanguard of sorts. "The sword, as we have reason to know, is often much mightier than the pen. However, there are things that pens can do, and swords cannot."

Hitchens is of course right about that. And a good case can be made that most great literary or artistic works were produced by individuals who were out of step with their environment. Where Hitchens is less convincing, however, is in so sternly positing an antagonism between the public intellectual and public opinion. The effective intellectual, even the radical, can also be the one who manages, while daring to be different, to discern and express what the public's opinion really is. For example, we may assume that in their moments of greatest relevance, Vaclav Havel, Boris Pasternak, or Richard Wright, "combatants" all, expressed what their peoples wanted to say but could not.

Hitchens might not disagree with this, inasmuch as it supposes that the credible intellectual is especially sensitive to the public's consciousness. But this raises a second problem: What allows us to accept that "intellectuals" have any greater feeling for the Truth than anyone else? Obviously some do and others don't, but what criteria permit the anointing of an amorphous assemblage of gatekeepers? Hitchens argues that populism has become



the "vernacular for elitism." Perhaps in some circles it has. However, it is not particularly clear, on the basis of Hitchens' guidelines, what differentiates "acceptable" intellectual elitism from the elitism public intellectuals are supposed to combat.

A third problem is that Hitchens, who rightly assumes the public can be easily gulled, underestimates its aptitude for indifference—at least toward public intellectuals. Often there is simply no discord between the public and intellectuals, *faute de combattants.* Public intellectuals in much of the developed world—including the more luminous members of Hitchens' literary pantheon—often seem to interest a relatively small number of people. On top of this, much of the public is armed with a technology that allows it to circumvent gatekeepers when defining taste, style, quality, and social merit. It is not so much that public intellectuals are unacknowledged—which they are—but that they are incapable of legislating anymore.

But not to kill the beast too soon: What of the ecumenism of good literature, which gains its resonance in, and must provoke, contradictory sensations? Those in search of an answer will find few pens sharper than Hitchens'. The reason is that he invariably allows art to transcend dogma in his writings. That may sound like a cliché, but one apparently not so readily embraced by Hitchens' political comrades. Propping up a favorite straw man, former *Commentary* editor Norman Podhoretz, Hitchens writes that "Podhoretz is accidentally right, as it happens, in maintaining that there is...a special *ad hominem* venom on the Left, and an extreme willingness to attribute the very lowest motives to those who transgress its codes." Thus speaks the unmade friend of Sidney Blumenthal—Hitchens was famously set upon by the left after he accused the former Clinton administration strategist of being deceitful on behalf of the president.

Whether Hitchens is describing T.S. Eliot, Rudyard Kipling, or Mencken, he is often addressing ideological adversaries. Yet he is receptive enough to the irony of history to avoid giving the transactions a second thought. In the end Hitchens knows that what remains is that which we want to remember. If it is any good, we will look beyond the more sordid trimmings. This is what allows Hitchens, and many of us, to overlook Kipling's imperialism, Mencken's martial Germanophilia, and Eliot's anti-Semitism in favor of their achievements as artists or stylists. As Hitchens notes in the essay "Something About the Poems": "In looking for creative dissonance, we should attend to the long rhythms and traditional

SCOTT STANIS

echoes. This essentially radical and critical task is made no easier by those who prefer a philistine display of the appropriate credentials."

In Gore Vidal, again, Hitchens finds creative dissonances that provide much pleasure. It has always been exotic that a favored line of attack against Vidal has been to brand him "anti-American." Hitchens, who has actually read Vidal's books, does a service in stating the obvious: "Yet it is essential, in the understanding of Vidal, to know how conservative as well as how radical he can be." The same thought comes to mind when rereading Hitchens' account in an earlier book of his encounter in 1986 with Jorge Luis Borges. Borges asked that compliments be sent on to Gen. Pinochet, before offering Hitchens a gift in the form of a Dante Gabriel Rossetti sonnet on man's inability to concurrently consider the real and the ideal.

Not surprisingly, Hitchens finds far less interesting those public intellectuals who aspire to neutrality—a bland canceling out of extremes. At the end of a long and often scathing essay on Isaiah Berlin, he writes: "It is also fair to add that he never broke any really original ground in the field of ideas. He was a skilled ventriloquist for other thinkers." Where the extremes are bared, however, there is often a problem of quality. In a lapidary review of Tom Clancy's *Executive Orders*—elitism or not, Hitchens reads both high and low—he writes: "Clancy has become the junk supplier of surrogate testosterone."

Hitchens' public style is suffused with well-honed paradoxes. One suspects he enjoys the aesthetics of playing the erudite hack, the classically trained essayist with *nostalgie de la boue*, the roaring drinker who can cite volumes of poetry. Yet a more significant, if not as entertaining, facet of Hitchens' approach is that, though ferocious in his writing, he is even more so in his reading. Rare are those sentences in Hitchens' assigned texts that are left unturned, the passages that are not cross-referenced, the contradictions that are not outed. Half of understanding literature is reading it through the right person.

The cross-references Hitchens provides are always useful. Eliot, some of us learn, based "a grave moment" from *Murder in the Cathedral* on a doggerel from the early Sherlock Holmes story "The Musgrave Ritual." Eleanor Roosevelt's reluctance to commune with the dead ("It's rather a waste of time chatting with all of them *before* we get there") is deftly linked to Hillary Clinton's revelation that she "channeled" Mrs. Roosevelt in the private quarters at the White House. Tom Wolfe's two novels, *A Man in Full* and *The Bonfire of the Vanities*, are compared, and their similarities revealed as so striking that Hitchens accuses Wolfe of running on empty.

The public can circumvent gatekeepers when defining taste, style, quality, and social merit. It is not so much that public intellectuals are unacknowledged but that they are incapable of legislating anymore.

Hitchens, the astute reader, is also a stylist, ever intolerant of the poor prose served up by others. Bruno Bettelheim is employed to make a point about Roald Dahl, but Hitchens cannot resist slipping in that Bettelheim's style is both dogged and pedantic. Why not? There is no reason why a public figure such as Bettelheim, even if he was a psychoanalyst, should be let off the hook when it comes to transparency of expression. Hitchens himself is usually transparent. A terse comment on the aging Arthur Conan Doyle says more than a paragraph could hope to on mental decline: "Once the reserves of scientific doubt were gone, his sails would swell at the last zephyr of anything fraudulent or inane."

There is occasional excess, but Hitchens rarely sins through understatement. One can disagree, for example, that *The Great Gatsby* was "a declaration of independence by American writing." What happened to Mark Twain? And surely Herman Melville or Sherwood Anderson developed the "noticeably native style" that Hitchens attributes first to Fitzgerald. In an article on the novelist Michael Frayn titled "The Real Thing," Hitchens goes overboard in associated references, writing: "The great secret about the English rural idyll—an idyll most harshly dissipated in Sam Peckinpah's *Straw Dogs*—is that the bucolic scene is very often one of cruelty, surliness, and resentment...." He adds later that one of Frayn's characters would best ponder Kierkegaard's view that, "The whole problem with existence is that it has to be lived forwards and can only be reviewed or evaluated, so to say, backwards." Does Hitchens really need to reach for Peckinpah in that context? Or for Kierkegaard, to arrive at the most banal formula about 20/20 hindsight?

These infrequent missteps nevertheless underscore the atypical journalist Hitchens is. Competent polyvalence is a rarity in current American journalism, as is, incidentally, trustworthy specialization. Hitchens is among the few who can blend both, while sounding original. In several of the publications to which he contributes, Hitchens stands out against his colleagues. His articles in *The Nation* are islands of irony and derision in a sea of Old Left earnestness. In *Vanity Fair*, Hitchens is a priest to highbrow culture amid paeans to social shallowness.

There is daring here, and the fact that Hitchens has become one of America's more illustrious journalists since descending on Washington, D.C., two decades ago shows that the public, whatever its myriad failings, has more than acknowledged him.

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What happens when an innovative artist--a modern-day Vermeer--meets the woman who embodies the radiant sensuality of his paintings?

THE LIVING IMAGE

Go Ask Alice

Here's Alice through a different looking glass: Lewis Carroll's lens. This famous pose of Alice Liddell—auctioned off by her descendants in June—was taken by Carroll in 1858; seven years later he would publish the tale he'd made up to amuse the girl, *Alice's Adventures in Wonderland.*

Victorian photos are often opaque today; many were frankly narrative and were intended to evoke pathos. Carroll dressed Alice as a "picturesque" beggar in imitation of the work of Oscar Rejlander, an early professional photographer who often posed his models as urchins. Rejlander's most successful subject pretended to be a popular Dickens character, "Poor Jo" from *Bleak House*. Thus Carroll borrowed his pathos from Rejlander, who borrowed his narrative from Dickens; today the whole train of creativity would be the subject of corporate copyright litigation.

Yet it was Carroll as writer who helped found the modern, litigious entertainment economy. *Alice in Wonderland* freed children's literature from the burden of teaching pieties, and helped to justify entertainment for its own sake.

Alice Liddell paid the price for that revolution, for she never escaped Carroll's artful literary posing. It was she who importuned him to write down his stories, but she soon grew weary of the fictional persona that overwhelmed her life. "But oh my dear I am tired of being Alice in Wonderland," she once wrote to her son. Or as Alice says to the Caterpillar, "I can't explain *myself*, I'm afraid, sir, because I'm not myself, you see."

—Charles Paul Freund

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Handicapped American Schools

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The United States school system is distinctive in lacking a national ministry of education that sets forth uniform education goals and standards. Our Constitution leaves authority over schools to the states. The states delegate much authority to local school districts, which leave much discretion to principals and teachers. This local control makes for great diversity in student learning, but **students who move from one school to another often lack the knowledge necessary for success in their new schools.**

Our system is distinctive in other ways that handicap efficiency. Ludger Woessmann of the Kiel Institute of World Economics reported the largest study of educational efficiency ever conducted. His analysis of thirty-nine countries showed that close attention to test results, school control over staff and operations, teacher discretion over teaching methods, and competition from private schools fostered high achievement. The influence of teacher unions on curriculum had negative effects, and spending made no difference.

The findings help explain the U.S. oddity of high costs but poor student progress during the school years. In his 1776 book *The Wealth of Nations,* Adam Smith suggested that "division of labor" promotes efficiency. In many efficient organizations, three groups divide their efforts: external boards establish their distinctive mission, set goals, and measure progress; responsible and responsive to boards, management hires staff and directs operations; staff members hardly invent their own idiosyncratic goals but concentrate on carrying out their responsibilities to attain board goals. Sustained failure of any one of these three groups at their respective tasks means the organization fails.

Nearly the opposite is true of the U.S. public school system. No goal is too remote from academic learning to adopt; no "stakeholder" too removed from having a say about the mission and goals. State and local school boards fail to set clear goals and measure progress. At the same time, they tend to interfere with school management.

Teachers, principals, boards, and national interest groups compete to set priorities and control teaching. Yet when everyone is responsible, no one is responsible, and having twenty-three priorities means having none. Contention, noise, and fads prevail. In the end, teachers cannot depend on what their students were previously taught. Boards, leaders, and staff all overreach, and yet each group tends to fail at its distinctive task. A thousand flowers bloom but do not a garden make.

Other countries provide much better accountability. While making goals clear, they allow parental choice of privately and publicly governed schools, both publicly financed. **Competition encourages educators to identify the best practices and helps parents choose the best schools.** We spend public funds only on public schools, which limits most parents to the beggar's choice of only a single school, which has little incentive to improve since its customers have nowhere else to go.

The answers to these problems are clear: measurement and accountability for results, public support of schools that compete with one another, and parental choice of schools.

— Herbert J. Walberg

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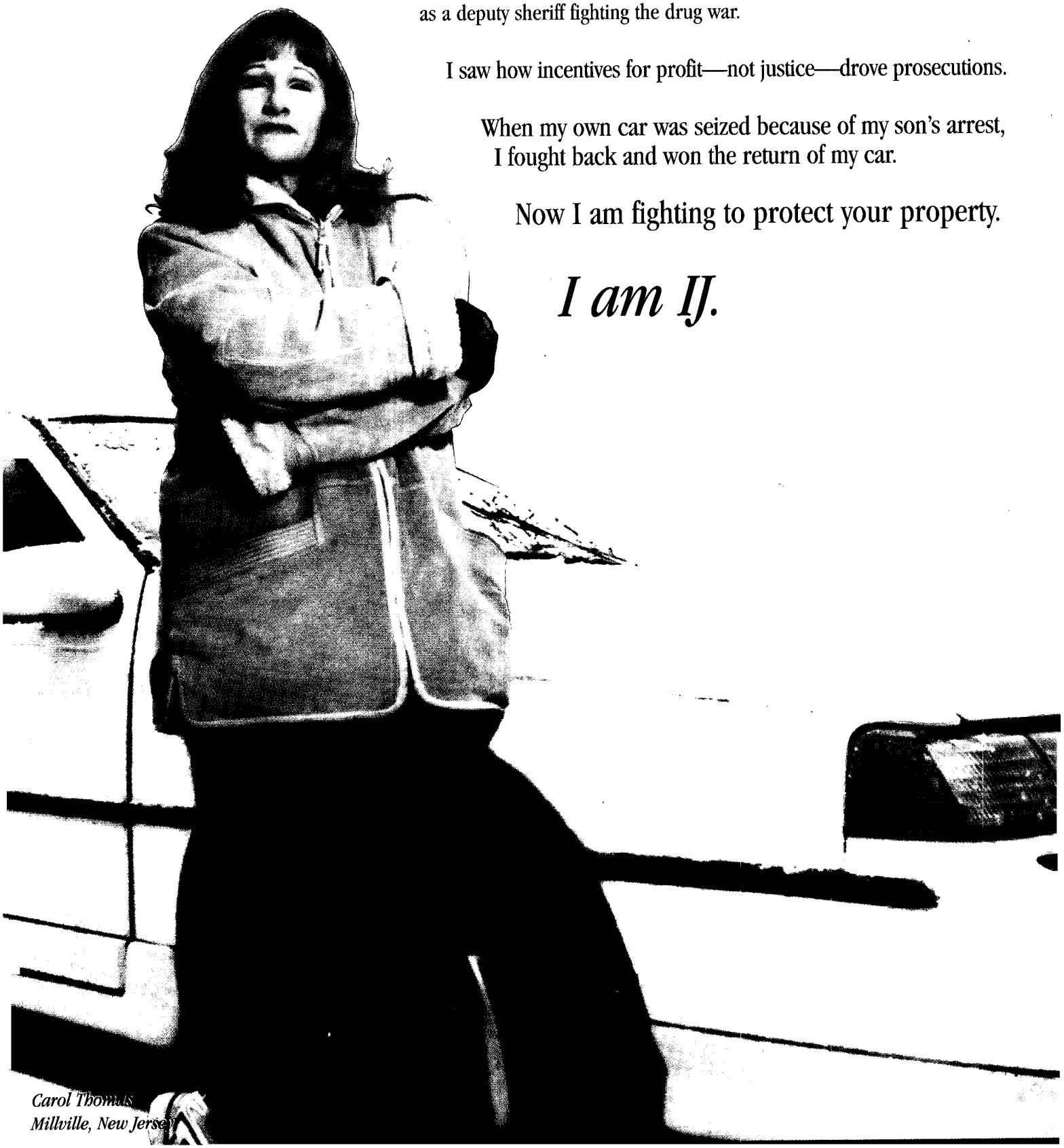

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